

REPORTER'S RECORD

VOLUME 50 OF 57 VOLUMES

TRIAL COURT CAUSE NO. F09-59380-S

CASE NO. AP-76,458

THE STATE OF TEXAS : IN THE 282ND JUDICIAL
VS. : DISTRICT COURT OF
GARY GREEN : DALLAS COUNTY, TEXAS

PUNISHMENT PHASE BY JURY

On the 2nd day of November, 2010, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Andy Chatham, Judge
Presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand computer
assisted transcription.

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1 PROCEEDINGS

2 THE BAILIFF: All rise.

3 (Jury returned to courtroom.)

4 THE COURT: Thank you all. Please be seated.

5 Good morning, ladies and gentlemen.

6 Let's see, does the State want to do something

7 real quick?

8 MR. BEACH: Yes, sir. At this time, Judge, we'd

9 offer into evidence State's Exhibit 155. It's an additional

10 Parkland Health & Hospital System records.

11 (State's Exhibit 155 offered.)

12 MR. JOHNSON: We have no objection 155.

13 THE COURT: They are admitted.

14 (State's Exhibit 155 admitted.)

15 MR. BEACH: The State would offer State's

16 Exhibits 156 and 157, which are the DCAC records involving both

17 boys.

18 (State's Exhibits 156 through 157 offered.)

19 MR. JOHNSON: Judge, can I withhold my objection

20 to that until they are sponsored through the appropriate

21 witness?

22 THE COURT: You -- you may. We'll take that up

23 accordingly.

24 MR. BEACH: The State would call Kevin Ashford.

25 (Witness brought forward and sworn.)

1 THE COURT: Please have a seat.

2 KEVIN ASHFORD,

3 was called as a witness by the State, and after having been

4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BEACH:

7 Q. Tell us your name, please.

8 A. Kevin Ashford.

9 Q. Kevin, you're going to need to keep your voice up,

10 kind of speak right into that microphone. You've had a long

11 day already; is that right?

12 A. A little bit, yes, sir.

13 Q. What are you doing right now for a living?

14 A. I'm an over-the-road trainer for a major motor

15 carrier.

16 Q. And how much time do you spend on the road?

17 A. I get home about 60 days a year.

18 Q. You what?

19 A. I get home about 60 days a year.

20 Q. And where did you bed down last night?

21 A. Salt Lake City, Utah.

22 Q. And you were nice enough to fly down here from Salt

23 Lake and -- and tell these folks what you know about Gary

24 Green; is that correct?

25 A. Yes, sir.

1 Q. Back in the early 1990's, Kevin, how were you

2 employed?

3 A. I worked for the Texas Department of Criminal

4 Justice Institutional Division.

5 Q. Okay. And what was your job with TDCJ?

6 A. I was a correctional officer, third class, assigned

7 to the Beto 1 Unit, administrative segregation, in close

8 custody, high security area.

9 Q. And do you recall what year you would have started

10 with the prison system?

11 A. It was in -- approximately the middle of 1988.

12 Q. Okay. And the incident that we're here about today

13 happened on January the 9th of 1994. About how long total were

14 you with the system?

15 A. About four and a half -- close to five years.

16 Q. You said you worked primarily in the Ag Seg --

17 A. Ag Seg, close custody, yes, sir.

18 Q. Okay. And just tell the folks of the jury what Ag

19 Seg is?

20 A. That's -- administrative segregation is -- is --

21 it's locked down within a prison system. There's basically

22 three ways that you can be detained in administrative

23 segregation: If you are a threat to other inmates, a threat to

24 officers, or an escape risk. And that's who we house in

25 administrative segregation.

1 Q. And that's where you spent the majority of your

2 time; is that correct?

3 A. Yes, sir.

4 Q. Now, we -- we talked last week. What was going on

5 philosophy-wise in the prison system there in the -- say

6 mid-'93 through the first part of 1994?

7 A. There was a -- there was a lot of tension in the

8 prison system because they had -- they had started different

9 policies about -- under integration, housing, classification,

10 and things like that. There was a lot of tension. There was a

11 lot of uses of force and things like that were going on.

12 Q. Okay. Trying to integrate inmates in their

13 living -- living quarters; is that correct?

14 A. Yes, sir.

15 Q. In the chow hall?

16 A. Yes, sir.

17 Q. Just trying to keep cliques of the different races

18 from spending 24 hours a day with each other?

19 A. Yes, sir.

20 Q. And you said that led to you and the other guards

21 having to do what?

22 A. We -- they initiated policy that we would use force,

23 if necessary, to integrate.

24 Q. Now, January 9th of 1994, why we're here today, did

25 they call you from the Ag Seg section and have you help out in

1 the cafeteria on that day?

2 A. In the North Chow Hall, yes, sir.

3 Q. And why would they call you from Ag Seg to help out

4 in the cafeteria?

5 A. Several different reasons. If they were short in

6 the building and needed somebody -- needed officers, if we had,

7 you know, some extra staff in high security, we would go down

8 and help. Or if they thought that they had information that

9 there could be a possible incident, they would. A lot of times

10 if close custody was going into the chow hall, they were always

11 a risk in an area like that. You know, chow hall, rec yards,

12 anything like that, they would call us to go down and -- and

13 assist with that.

14 Q. About 11:45 that day -- we've talked about this --

15 this happened over 16 years ago; is that correct?

16 A. Yes, sir.

17 Q. And -- but without even reviewing your report, do

18 you have a fairly good recollection of what happened that day

19 around 11:45?

20 A. I do, sir.

21 Q. Did you have an encounter with an inmate by the name

22 of Gary Green?

23 A. I did.

24 Q. And was his inmate number 553362?

25 A. I don't know that right off the top of my head,

10

1 but --

2 MR. BEACH: May I approach, Judge?

3 THE COURT: You may.

4 Q. (BY MR. BEACH) I show you, Mr. Ashford, what's been

5 marked for identification as State's Exhibit 158. Do you

6 recognize what that is?

7 A. This is an inner office communication that I wrote

8 that day about the assault from inmate Gary Green, TDC Number

9 553362.

10 Q. And from reviewing State's 158, you made note of Mr.

11 Green's inmate number; is that correct?

12 A. Yes, sir.

13 MR. BEACH: We'd offer 158 for record purposes,

14 Your Honor.

15 (State's Exhibit 158 offered.)

16 THE COURT: It's admitted for record purposes.

17 (State's Exhibit 158 admitted.)

18 Q. (BY MR. BEACH) Prior to January 9th of 1994, to

19 your recollection, had you ever encountered Gary Green before?

20 A. No, sir.

21 Q. That day was that your only encounter being in Gary

22 Green's presence as far as you could remember?

23 A. Yes, sir.

24 Q. What were your responsibilities there in the chow

25 hall that day?

1 A. Just conduct security, maintain custody and control

2 of the inmates while they were feeding.

3 Q. Okay. And the best you can recall before this

4 incident started, how far along the process had it gotten in

5 terms of that group of inmates coming in and getting their

6 trays and being seated?

7 A. From what -- best I could tell, we weren't but maybe

8 30, 45 minutes into the chow procedure.

9 Q. And how many other inmates would have been in the --

10 in the cafeteria at that time?

11 A. There was probably close to around a hundred inmates

12 or so.

13 Q. Now, was Mr. Green one of those inmates?

14 A. Yes, sir.

15 Q. And when you first encountered Gary Green, did he

16 have his food tray?

17 A. Yes, sir.

18 Q. And what were you trying to get Gary Green to do

19 that day?

20 A. When I would conduct security in the chow hall,

21 inmates have a tendency to spread out and it's hard to control

22 what's going on. So I would order the inmates to sit in

23 particular places where I could keep control over what was

24 going on, basically. And I ordered him to sit down at a

25 particular table. And for whatever reason, he didn't -- he

12

1 didn't like that I did that and became aggressive.

2 Q. Mr. Green was going to go off by himself someplace

3 away from the main group, and you wanted him to sit near the

4 main group?

5 A. Yes, sir.

6 Q. And he didn't like you telling him to do that?

7 A. It seemed that way, yes, sir.

8 Q. What happened? Did you then order him to get with

9 the main group?

10 A. Yes, sir. I gave him several orders to do so, and

11 he refused to do so and --

12 Q. What happened then?

13 A. I gave him a -- I told him at that time to put his

14 tray down, I was going to take him to the hallway. We were

15 going to go out and address the lieutenant about his behavior

16 and what was going on and being disruptive in the chow hall.

17 Q. Why would you want to take him out in the hall to

18 get him isolated from the rest of -- rest of the inmates?

19 A. Because if we -- if something happened there in the

20 chow hall, I had no backup. And there's a hundred inmates

21 standing there between me and the hallway door. I want him

22 outside of the chow hall. I don't want to be pinned down in

23 the corner with another hundred inmates.

24 Q. And when you told Mr. Green that -- for him to step

25 out in the hall to talk to the lieutenant, what did he do at

1 that time?

2 A. Threw his food tray at me.

3 Q. And when you say threw it, can you describe how Mr.

4 Green threw the food tray?

5 A. He just flung it like a Frisbee.

6 Q. Where -- did it hit your body?

7 A. Yeah, it me right in the midsection of the body.

8 Q. Now, you're a pretty big guy; is that right?

9 A. Yes, sir.

10 Q. Were you a pretty big guy back in 1994?

11 A. About the same size.

12 Q. After Mr. Green threw his food tray and hit you in

13 the mid part of your body, what happened next?

14 A. He came towards me, and I initiated a major use of

15 force to gain control of the inmate.

16 Q. You're still there in the cafeteria?

17 A. Yes, sir.

18 Q. There are other inmates around watching this; is

19 that correct?

20 A. Yes, sir.

21 Q. And you didn't -- you didn't have any immediate help

22 from other correctional officers at that point?

23 A. Not immediately, no, sir.

24 Q. What happened then?

25 A. We struggled, and I was attempting to gain control

14

1 of him. I did eventually get another officer to help me. We

2 did eventually gain control of him, got him down on the floor,

3 I handcuffed him, and another officer came and helped and we

4 got him out of the chow hall.

5 Q. Okay. During the struggle, did any part of Mr.

6 Green's body come in contact with your body?

7 A. Yeah, he was kicking and fighting, yes, sir.

8 Q. What do you remember just generally about Mr.

9 Green's physical dimension, strength at that --

10 A. He was a pretty good size guy from what I remember

11 back then, yeah.

12 Q. He didn't go down easy; is that correct?

13 A. No, sir.

14 Q. Eventually you were able to get Mr. Green in

15 handcuffs and get him out of that situation?

16 A. Yes, sir.

17 Q. And afterwards, after he had been removed from the

18 cafeteria, you filled out the report that I just showed you; is

19 that correct?

20 A. I did, yes, sir.

21 Q. After that day, do you recall having any other

22 dealings with Gary Green as long as you worked there?

23 A. I think that was the only time I ever dealt with

24 him.

25 MR. BEACH: I'll pass the witness, Judge.

THE COURT: Cross.

CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. Mr. Ashford, you -- policy of TDC, sir, if you -- if

3 you make a complaint or file a disciplinary action on a

4 prisoner for a major use -- for a major use of force, is that

5 what you're claiming this was?

6 A. If I -- you're asking me if I used major use of

7 force on him?

8 Q. You -- you responded with what you call a major use

9 of force; is that correct?

10 A. Yes, sir.

11 Q. And you -- and you made an allegation that the

12 Defendant committed an assault upon you with what would be

13 termed in TDC system as a weapon being the tray itself; is that

14 correct?

15 A. That is correct.

16 Q. And when you do that, will you tell this jury over

17 here -- those things aren't taken lightly, are they?

18 A. No, sir, I wouldn't think so.

19 Q. Well, in fact, this one here wasn't taken lightly

20 either, was it?

21 A. I'm not sure what happened with it after -- after

22 the incident.

23 Q. Are you sure -- are you telling this jury you don't

24

25

16

1 know what happened when this thing was followed up and

2 everybody was interviewed, including other guards?

3 A. I don't know what happened after.

4 Q. Can you tell me about a fellow -- do you know a

5 fellow by the name of James Williams?

6 A. I don't recall.

7 Q. You don't remember him being a fellow employee?

8 A. I don't remember; it's been a long time ago.

9 Q. Do you remember who the -- what the name of the

10 fellow was who came up and assisted you in this situation?

11 A. I don't remember, no.

12 Q. Were you aware of the fact that other -- other

13 guards were interviewed in response to the allegations you made

14 against the Defendant?

15 A. I don't know that either.

16 Q. Were you ever called upon, sir, to go down and

17 testify in regards to this -- to this case?

18 A. I don't think so.

19 Q. And you're telling this jury you don't know why?

20 A. No, I don't.

21 Q. You've -- you've never heard the reason?

22 A. No, sir.

23 Q. Sir, when you -- if you claim a prisoner has used

24 force against you, that case is referred to the Inspector

25 General's Office, is it not?

1 A. I'm not sure.

2 Q. Do you recognize this being a criminal case

3 information work sheet that's prepared by the Internal Affairs

4 Division?

5 A. I don't recognize that, to be honest.

6 Q. You don't recognize any of these documents?

7 A. No, sir, I don't.

8 Q. And when you talk about people that were witnesses,

9 in fact, there was another guard standing right there when this

10 whole incident was alleged to have occurred, was there not?

11 A. I don't remember. I'm sure there was another

12 officer in the chow hall.

13 Q. And were you aware of the fact that he was

14 interviewed and he disputes your -- your version of what you

15 said happened?

16 MR. BEACH: Judge, I'm going to object to

17 comparing what someone else said from a hearsay document. Mr.

18 Johnson's interpretation, I'm going to object.

19 MR. JOHNSON: Can I have a stapler?

20 (Discussion of the record.)

21 MR. JOHNSON: Can we approach real quick, Judge?

22 THE COURT: Do we need to have a hearing?

23 MR. JOHNSON: I don't think so.

24 (Sidebar conference.)

25 THE COURT: Quick hearing, folks.

1 THE BAILIFF: All rise.

2 (Jury excused from courtroom.)

3 THE COURT: May I see that, please?

4 MR. JOHNSON: Okay.

5 (Discussion off the record.)

6 THE COURT: We're ready.

7 (Jury returned to the courtroom.)

8 THE COURT:

9 Thank you all. Please be seated.

10 MR. JOHNSON: May I continue, Your Honor?

11 THE COURT: Please continue.

12 Q. (BY MR. JOHNSON) State your name, please. State

13 your name, please.

14 A. Kevin Ashford.

15 Q. You're the same person who was testifying before we

16 took our break; is that correct?

17 A. Yes.

18 Q. Mr. Ashford, now I'm going to ask you to look at

19 what's been marked for identification purposes as Defendant's

20 Exhibit Number 2. And this is the same document I showed you a

21 moment ago; is that correct? You had a chance to look at it a

22 moment ago, and you did not identify it, but there's been some

23 pages added to it. Do you recognize this right here?

24 A. Yes, sir. That's the report I wrote that day.

25 Q. Okay. This is the statement that you made that day?

1 A. Yes, sir.

2 Q. And there is also a statement here by another

3 individual -- purports to be another guard there with you; is

4 that correct?

5 A. Okay.

6 Q. And another report by another officer; is that

7 correct?

8 A. Yes, sir, it looks that way.

9 MR. JOHNSON: Judge, at this time we're going to

10 offer for all purposes Defense Exhibit Number 2 which is

11 accompanied by a business record affidavit, and it also

12 contains what has been previously offered and admitted for

13 record purposes only as State's Exhibit 158 which is now for

14 all purposes part of Defense Exhibit Number 2.

15 (Defendant's Exhibit 2 offered.)

16 MR. BEACH: No objection.

17 THE COURT: It's admitted.

18 (Defendant's Exhibit 2 admitted.)

19 Q. (BY MR. JOHNSON) Now, when I talked to you a moment

20 ago, if there's a claim that an inmate has actually committed

21 an assault upon a guard, that is referred to the Inspector

22 General's Office for criminal prosecution; is that correct?

23 A. I'm not sure about policy, sir.

24 Q. Okay. And when this case was filed, the -- does

25 this -- the report that you have here, these documents, does it

1 indicate -- and I'll ask you to look at this and can you

2 refresh your recollection by looking at that, if you can now

3 tell the jury why this case was never prosecuted?

4 A. I don't know why it wasn't prosecuted.

5 Q. Could you look on -- is this document here, that's

6 it's based on non-supporting officer testimony?

7 A. That's what it says.

8 Q. Okay. And this page of the testimony, does it not

9 indicate on this document that is in evidence that he -- that

10 Officer James Williams observed this incident -- the entire

11 incident from the beginning, and that the tray struck the table

12 and not you?

13 A. That's what it says, yes, sir.

14 Q. Okay. And so when I asked you earlier if, in fact,

15 you recalled ever going down and testifying, based on the fact

16 that there was conflicting witness statements in regards to

17 what happened, the Inspector General's Office refused to

18 prosecute this case, is that not -- you recognize that now, do

19 you not?

20 A. Yes, sir, that's what you just showed me.

21 Q. And is it also not, in fact, sir, that you testified

22 earlier -- and let me ask you this. You had said earlier that

23 this thing -- you had an independent recollection of this; is

24 that correct?

25 A. Of the general incident, yes.

1 Q. A general recollection or -- or a clear, independent
2 recollection?
3 A. I remember what happened.
4 Q. Okay. What caused you to remember this incident?
5 A. I remember a lot of things that went on out there.
6 Q. And what years were you there from, sir?
7 A. Around the middle -- the late '88 to late '95, I
8 believe, because I took a -- I was -- I did take off though for
9 a little over a year in between that.
10 Q. What was the purpose of that?
11 A. I wanted -- I didn't want to be there anymore.
12 Q. And when did you do that, sir?
13 A. I don't remember exactly when.
14 Q. Do you not recall or do you recall having a meeting
15 or having a problem with Gary Green in -- in the December
16 before this was alleged to have occurred in which he was asked
17 to file a complaint against you?
18 A. I don't recall that, no.
19 Q. You have no recollection of that?
20 A. No, sir.
21 Q. The fact of the matter, Mr. Ashford, is that TDC
22 would call this situation an assaultive offense against a
23 guard; is that correct? These kind of situations are pretty
24 rare down there, aren't they?
25 A. No, sir, they're not.

1 Q. Well, I'm talking about the -- this one here
2 would -- it's called a major assault, is it not?
3 A. Yes, sir.
4 Q. Okay. And you weren't injured, were you?
5 A. No more than just minor stuff, just during the use
6 of force.
7 Q. And is it unusual that you wouldn't recall that this
8 thing was never -- that this thing was never prosecuted?
9 Wouldn't you expect that if it was some kind of a big deal,
10 that it would of either been prosecuted or you would of been
11 made aware of why it wasn't?
12 A. Not necessarily. Once we write the reports and
13 everything, it goes up above our heads. We -- I mean, the only
14 time we were ever -- anything is we were called as witnesses.
15 MR. JOHNSON: I think that's all I have for you
16 right now, Mr. Ashford.
17 REDIRECT EXAMINATION
18 BY MR. BEACH:
19 Q. I mean, having a food tray thrown at you, Mr.
20 Ashford, compared to getting stabbed in the back like you were;
21 is that correct?
22 A. Yep.
23 Q. That's a big deal, right?
24 A. A little bit.
25 Q. Okay. And you also told us that during this time

1 frame in a single shift, one day, you had to have 17 major uses
2 of force?
3 A. Yes, sir.
4 Q. So this -- this was not an --
5 MR. JOHNSON: Judge, this is outside the record
6 and I'm going to object to it.
7 THE COURT: I'm a little confused. Against Mr.
8 Green?
9 MR. BEACH: No, no, no, in general, in one day
10 where he had to hit 17 --
11 THE COURT: All right. That's -- objection is
12 sustained.
13 MR. JOHNSON: I'm going to ask that the jury be
14 instructed to disregard. It is irrelevant, it's improper.
15 MR. BEACH: May I respond?
16 THE COURT: Yeah.
17 MR. BEACH: He's trying to get him to say this
18 is a major deal. His question's opened up the door that this
19 was a -- some kind of major unique deal, and it's not, Judge.
20 It happens every day.
21 MR. JOHNSON: That's not -- that's not what --
22 that's not what I was saying at all, Judge.
23 THE COURT: I just -- it's just a question of
24 what does he do. What does Mr. Green do, not other people.
25 MR. BEACH: He's trying -- he's trying to make

1 it a big deal. That's all right, I'll move on.
2 THE COURT: Let's just focus on Mr. Green and --
3 and the actions of him.
4 MR. JOHNSON: And -- Well, Judge, my objection
5 to the question, and the whole line of questioning, is that
6 it's irrelevant, and it's improper. The Court sustained it.
7 I'm going to ask the jury be instructed at this time to
8 disregard it.
9 THE COURT: Well, it's just a question. It's
10 not evidence that --
11 MR. JOHNSON: Well, the way he -- the way he
12 phrased it to the witness, he stated it as a fact and it's
13 before this jury now be considered as fact. We're going to
14 object and ask the jury to be instructed to disregard it.
15 THE COURT: Okay. In an abundance of caution,
16 the jury will disregard. But the jury is reminded that the
17 questions the attorneys ask are not evidence. The answers to
18 the questions -- that are evidence.
19 MR. JOHNSON: And further, we move for a
20 mistrial at this -- at this point, because I believe this is
21 going to be a cumulative error that continues through this
22 portion of the punishment phase.
23 THE COURT: Okay. That's denied.
24 MR. BEACH: I'll pass the witness.
25 MR. JOHNSON: Nothing further.

1 THE COURT: Okay.

2 MR. BEACH: May he be excused?

3 THE COURT: Yes, he may. Sir, thank you very

4 much for coming IN.

5 MR. HEALY: The State calls Melodye Nelson.

6 (Witness brought forward.)

7 THE COURT: If you would.

8 (Witness sworn.)

9 THE COURT: Please have a seat.

10 THE WITNESS: Yes, sir.

11 MR. HEALY: May I proceed, Your Honor?

12 THE COURT: You may.

13 MR. HEALY: Thank you, sir.

14 MELODYE NELSON,

15 was called as a witness by the State, and after having been

16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HEALY:

19 Q. Ma'am, if you could, please state your name for the

20 record and spell your last name for the court reporter.

21 A. Yes. Melodye Nelson, N-e-l-s-o-n.

22 Q. How are you employed, ma'am?

23 A. I am a warden with the Texas Department of Criminal

24 Justice.

25 Q. And what specific unit are you working at now?

1 A. I am at the Dr. Lane Murray Unit in Gatesville,

2 Texas.

3 Q. What kind of unit is that?

4 A. It is a maximum custody female facility at this

5 time.

6 Q. And are you the senior warden at that unit?

7 A. Yes, sir, I am.

8 Q. How long have you been doing that?

9 A. Sixty-two days.

10 Q. Okay. Warden, if you could, please, familiarize

11 yourself with the jury and explain to them how many years and

12 what jobs you've held with the TDC system.

13 A. Yes, sir. I've been with TDCJ a little over

14 21 years -- almost 21 and a half. Started my career out as a

15 correctional officer at Ramsey III Unit in Rosharon, Texas.

16 Promoted to sergeant of correctional officers there. Was there

17 about three years, left that facility, took a promotion to

18 lieutenant of correctional officers at the Darrington Unit. I

19 stayed there about six years. Accepted a lateral transfer to

20 the Huntsville Unit in Huntsville, Texas. Was a lieutenant for

21 about a year. Then I promoted to captain of correctional

22 officers there. Was there about a year and a half as a

23 captain. Then I left Walls Unit, took a promotion to the Allan

24 B. Polunsky Unit in Livingston, Texas, where I was the major of

25 correctional officer overseeing death row. And then I took a

1 promotion in 2007 to the Assistant Warden at the Gatesville

2 Unit, Gatesville, Texas. And then about 62 days ago accepted

3 the promotion to Senior Warden at the Dr. Lane Murray Unit

4 there in Gatesville.

5 Q. Are you on any committees or chair of any committees

6 within the prison system?

7 A. Yes, sir. Your majors, your assistant wardens, and

8 your senior wardens are what we call chairmen of the unit

9 classification committees on a daily basis to oversee our

10 classification of our offenders assigned to us.

11 Q. And we're going to talk about classifications here

12 in a little while. But so basically so the jury understands,

13 you've kind of spent your time over 21 years in -- in different

14 areas of the prison system from all the way from death row to

15 now you're the Senior Warden of the maximum security women's

16 prison?

17 A. Yes, sir.

18 Q. Okay. What I want to do, Warden Nelson, if I could,

19 is just briefly before we get into the classification aspect of

20 the prison system, talk about the TDC system as a whole. We're

21 talking about types of units, talking about minimum versus

22 maximum security, those sort of things. First off, can you

23 start with kind of types of units we're dealing -- how many

24 types of units are here in the State of Texas?

25 A. What we have -- basically we -- we currently oversee

1 the operations of 112 correctional facilities in this state.

2 We oversee everything from a private facility where we pay a

3 company to house some of our offenders. And then we have

4 facilities that are substance abuse facilities. Some of them

5 are facilities that are what we call minimum custody.

6 Basically they house some nonviolent offenders. We -- we even

7 break it down into what we call a 2250 prototype. Those were

8 -- we have ten facilities that are built identical in the

9 agency that were built to house 2250 offenders -- maximum

10 security offenders, and then we have -- they actually house

11 more than that now because we've added some dormitories and

12 expansion bed facilities on there. We have thousand bed

13 facilities which are anywhere from minimum to medium, and some

14 have maximum security offenders there.

15 So we have -- and then we have psych facilities,

16 psychiatric inpatient facilities. We have the Mountain View

17 Unit which it has 20 beds, psychiatric for females, Skyview

18 Hodge which is in the Rusk area is a psychiatric and mentally

19 retarded offenders for the males and does house some female

20 offenders on a temporary basis. And the Jester IV Unit in

21 Richmond, Texas, is an in-patient psychiatric facility. And

22 then the Crain Unit where I came from, the Gatesville Unit, has

23 an in-patient facility for psychiatric which is -- houses the

24 female which was formerly the mentally retarded offenders

25 program, but it's now called the DDP which is the

1 developmentally disabled program for the female offenders.

2 Q. And I heard you spoke -- spoke earlier, you have the
3 Death Row Unit?

4 A. Yes. Female death row is housed at the Mountain
5 View Unit in Gatesville, Texas. The male death row is housed
6 at the Allan B. Polunsky Unit in Livingston, Texas.

7 Q. So basically the TDC system, you have a variety of
8 minimum security prisons, maximum security prisons, psych
9 prisons, psych prisons for males, psych prisons for females,
10 and so on?

11 A. Right. Yes.

12 Q. And talk to me about the number of inmates statewide
13 in the TDC system right now.

14 A. Currently give or take a couple of thousand, I think
15 we're right about 150,000 incarcerated inside of those
16 facilities.

17 Q. And what about guards?

18 A. I think we have around 25,000. I believe we have
19 about 15,000 males and about 9,000 females, give or take some.

20 Q. Okay. So you're looking at about a 60 percent male
21 guard and 40 percent female guard, somewhere around there if my
22 math is correct?

23 A. Yes, yes.

24 Q. And when you're talking about a regular shift in any
25 of the normal prison units, how many guards per inmates usually

30

1 are there, approximately?

2 A. Approximately, you're going to have -- depending on
3 your custody levels, because your higher custody levels require
4 more staffing, but on a general level, you're going to have
5 anywhere from 30 correctional officers potentially to 40
6 correctional officers per shift. Some of the bigger facilities
7 may have 70 per shift, but those will have 3,000 or 4,000
8 offenders. So it's about 30 to 1 on the offender population --
9 30 inmates to every one correctional officer on shift at any
10 given time.

11 Q. Okay. Now, Warden Nelson, what I want to do now
12 then, I want to talk to you about -- and we're going to get
13 specific here in a second with regard to the Defendant, Gary
14 Green. But first off, if you can explain to the jury when an
15 inmate comes to TDC, how the process works to where they are
16 classified, and then we're going to go through the whole
17 classification process here.

18 A. Okay. Once an offender is received from a county
19 jail into one of our intake facilities, they get a jail report,
20 they get a background information, whatever crime they've
21 committed, things of that nature. And then they are the -- we
22 have a group of individuals called state classification
23 committee, and they give a recommended custody level -- a
24 recommended assignment level, and so they could be a state jail
25 offender or an I.D. offender. We have state jails also that --

1 that operate within ours. And we have everything from state
2 jail and general population Level 1's, all the way up to Level
3 5's, and then we have Ag Seg, a custody called administrative
4 segregation that they could potentially be -- go directly into.

5 Q. Okay. And that's where I want to start, Warden
6 Nelson, with regards to the classifications. First off, you
7 brought up the numbers -- the 1's to 5's. In the most basic
8 terms so the jury can understand it, tell the jury when you're
9 talking about -- I think it's called G1 through G5, what we're
10 talking about there?

11 A. G1's -- the G standing for basically general
12 population. G1's is an offender assigned to a minimum custody
13 which is an outside trusty. Whether they live inside the
14 perimeter or outside of our perimeters, they basically require
15 a minimum amount of supervision. They're required physically
16 to be seen every two hours, so they can mow, they can ride our
17 tractors, they work out in our fields, and things of that
18 nature.

19 A lot of them are what we call the dog handlers
20 where they use our tracking dogs, our scent specific dogs.
21 Those -- those offenders are minimum custody. Those offenders
22 are within one year of their eligibility to parole. Doesn't
23 mean they're going to parole within it. It just means that
24 they're eligible to parole within that one year and have -- do
25 not have a pattern of violent offenses, whether in any -- in

32

1 any arrests, but they don't have a pattern of those.

2 G2's are what we call general population.
3 They're minimum in. They are supervised inside of our
4 correctional facilities, but when they're outside, they must
5 have armed supervision. Our outside trusties, the only thing I
6 forgot to tell you is they don't require armed supervision, so
7 the officers -- the supervisors do not carry sidearms or
8 firearms.

9 Your minimum ins do require armed supervision
10 outside of our perimeter, not inside. There, again, could be
11 because of their crime, could be their violent offenses, could
12 be different things of reason why they're not out -- considered
13 for outside trusties.

14 G3's are any offender that is doing 50 years or
15 more and has done less than ten years of that 50-year sentence.
16 They are general population. They pretty much live, work, and
17 eat amongst our G2's, but they are housed with other G3's, if
18 possible. And we restrict their jobs. Basically they can't
19 have a job that takes them to multiple areas of our facilities,
20 so they can't work in maintenance, for instance, where they
21 would be escorted around to multiple areas. They work out in
22 our fields. They can work -- sometime -- they're S.S.I.,
23 support service inmates, where they can clean and be janitors,
24 things of that nature. So they're limited on their jobs.

25 G4's are medium custody offenders, and those are

1 offenders who basically have had -- had some disciplinary
2 history, maybe not violent, but so much as repetitive
3 offenders. They have chronic rule violations inside of our
4 prison system. So we put them in G4. They live in cell block
5 housing in 2 persons to a -- to a cell.

6 Our G5's which are -- was formerly known as our
7 close custody. Those are our offenders who have disciplinary
8 issues, that are violent in nature. Now, they live in cell
9 blocks two to a -- two to a cell, as well. Now, their movement
10 is restricted -- is more restricted in their -- things like
11 their recreation time, their visitation. Those are limited
12 from others -- what the others are allowed to get, so it's an
13 incentive not to go down there.

14 Administrative segregation are offenders who
15 have -- have a pattern of violence either against our staff or
16 other offenders or known gang members in one of our known gangs
17 that -- prison gangs, and they -- they are segregated, single
18 celled, recreated either one or two hours a day, depending on
19 their recreation schedule. They are restricted, they --
20 everywhere they go they are in hand restraints and are escorted
21 by two correctional officers.

22 Q. And death row is -- we're going to get to in a
23 second, but basically the same restrictions as --

24 A. Death row is the same thing as administrative
25 segregation. They are single celled. They are restrained in

1 any -- any area that they are escorted to. And they single rec
2 by themselves, and they -- obviously, like I said, are escorted
3 by two correctional officers anywhere that they go.

4 Q. And you keep bringing up that point on the Ag Seg
5 and the death row, they're always escorted by two correctional
6 officers. When you're being moved around as a G1 through G5,
7 are you handcuffed? Are you moved --

8 A. Your G5's are inside the housing areas and outside.
9 Their -- their movement is very restricted because of their
10 assaultive nature, but your G1's through G4's, on an ordinary
11 routine basis, no, are not.

12 Q. Okay. And how does one -- not talking about capital
13 murders yet, but how does one move up and down amongst the G
14 levels in general population?

15 A. The G3's -- it's -- it's strictly based upon your --
16 your sentence. If you receive a 60-year sentence and you've
17 only done five years, you're G3. That's the only -- the only
18 way you can get to be a G3 is -- is strictly because of your
19 sentence. However, your G1's, G2's, G4's, and G5's is because
20 of your institutional record and/or your crime. Your G1's,
21 like I said, has to do with not only your institutional record,
22 however, your prior incarcerations, your prior arrests, things
23 of that nature.

24 Q. Okay. Warden Nelson, what I want to do now is I
25 want to now concentrate you a second about the G3 status. You

1 told this jury here that it has to be something where you

2 receive a sentence of 60 years or greater?

3 A. Fifty years --

4 Q. Fifty years or greater, excuse me. If somebody is
5 convicted of capital murder and receives life without parole
6 and not a death sentence, what classification would they go
7 into?

8 A. G3.

9 Q. G3 status. So they're still going into general
10 population?

11 A. Yes.

12 Q. Now, when you talk about Ag Seg, that has nothing to
13 do with somebody who is convicted of capital murder and given
14 life without parole? They're -- they're in the general
15 population?

16 A. Correct. Unless their behavior -- they -- a G3 can
17 go to Ag Seg. I don't know if I was clear on that, but a G3
18 could, because of their institutional behavior, become
19 assaultive in nature and go to Ag Seg, but if he -- he or she
20 were to just come in with a 60 or 70 or life without parole,
21 yes, they would just go in as a G3.

22 Q. Now, prior to this -- after -- prior to a few years
23 ago after ten years, those G3 inmates who were convicted of
24 capital murder could potentially go down to a G2 level; is that
25 correct?

1 A. That is correct. Before we got the life without
2 parole, yes, G3 offenders and any G3 offender that is not doing
3 life without parole, after ten years, could go to G2.

4 Q. Now that law has changed, right?

5 A. Yes.

6 Q. So somebody that goes in as a capital murder life
7 without parole, they're looking at the best G3?

8 A. Right.

9 Q. Okay.

10 A. Yes, forever.

11 Q. Now, Warden Nelson --

12 A. At current.

13 Q. I -- we've questioned you before on this issue --

14 A. Yes, sir.

15 Q. -- and a couple of trials ago you testified that a
16 capital murderer on a life without parole could potentially
17 after ten years get moved down to G2?

18 A. Correct. And at that time it was my understanding
19 when we testified -- and that is the way the classification
20 plan -- if you read our classification plan, that is exactly
21 how it reads. However, there is an addendum -- a one-page
22 addendum that I was not aware of and -- but there is an
23 addendum now that says life without parole will remain a G3.

24 Q. Okay. Let's talk about the movement specifically
25 regarding G3 inmates now. Are they locked up 23 hours a day?

1 Are they -- tell the jury about that.

2 A. No, sir. G3 offenders basically have jobs. Like I

3 said, they can be janitors. They can work in our field. They

4 recreate. They go to a chow hall -- a dining area, eat with,

5 you know, 50, 60, 70, 80, whatever your dining facility holds,

6 they walk amongst our G1 and our G2's. They go to school.

7 They can go to school. They can go to the library. They can

8 go to the law library. Their only designator is we attempt --

9 we try to house them -- and when I say house, they can be in

10 the same cell block with G2's, but their particular cell

11 partner should also be a G3, okay, the partner that they're

12 living in that cell with will be a G3, but a few cells down may

13 be G2 offenders, depending on the custody level or the -- the

14 layout of your facilities.

15 Q. And just so the jury is clear, we're not talking

16 about all capital murderers who receive life without parole.

17 We're talking about any inmate who receives a sentence greater

18 than 50 years?

19 A. Correct, correct.

20 Q. So there could be DWI third individuals with capital

21 murderers. They could be theft people. There could be

22 burglary people --

23 A. Sure.

24 Q. -- with these capital murderers?

25 A. G3 offenders, I've seen them from -- anywhere from

38

1 possession of drugs, like you said, DWI, repeats, that come in

2 from these counties with, you know, even a 55-year sentence is

3 a G3 offender, 60 years, 70, life, whatever -- whatever

4 sentence. And, no, it does not necessarily -- and we will not

5 house just capital murderers with capital murderers. They'll

6 be in -- because of their custody level, that's what we house

7 by, the G3 custody designation.

8 Q. So really it's not so much the crime they committed,

9 it's just so much the matter of years they get when we're

10 talking --

11 A. Correct.

12 Q. -- about G3 status?

13 A. G3's, yes.

14 Q. Okay. What about contact visits, are G3 status

15 allowed to have contact visits?

16 A. Yes, but they have to be a certain time earning

17 status, and that's a whole different status from the custody

18 status. But once they get to a State-approved trusty --

19 believe it not, that's the word -- but it's SAT 4 --

20 COURT REPORTER: I'm sorry, what?

21 A. S -- State-approved trusty which is what we call an

22 SAT 4, which is a time earning status. Even though they don't

23 get that good time, they get to that custody level, they can

24 have contact visits.

25 Q. (BY MR. HEALY) Now, with regards to actually

1 staying in their cell with the bars shut, are we talking just

2 sleep hours here or what --

3 A. Usually, yes, absolutely. They're going to be at

4 work or recreation -- anytime an offender is not at work, they

5 have the opportunity to be recreating or going to school or

6 going to the law library. Or like I said -- or they can stay

7 in their cell. That's pretty much up to them, but lights out

8 at 10 o'clock and lights back on at 3:30 or 4 o'clock in the

9 morning, depending on your facility.

10 Q. So just so this jury is clear, when we're talking

11 about somebody who is convicted of capital murder and given

12 life without parole, basically they would be mandatory in their

13 jail cell from 10:00 at night to 5:00, 6:00 in the morning,

14 that's about it?

15 A. Yes, sir.

16 Q. All right. Talk to me about opportunities for

17 violence, and not specifically regarding this Defendant yet,

18 just opportunities for violence when we're talking about G3

19 status.

20 A. Well, they're in population. Like I said, even

21 though -- for the most part, not all, but they live in cell

22 blocks, but we do have dormitories with G3 offenders in it.

23 They're -- like I said, they have the opportunity to be with

24 other offenders so the opportunity -- and to be around other

25 staff members -- you know, to be around the staff members,

40

1 unrestrained, so, you know, the propensity for violence is --

2 is really up to what that individual chooses to do, whether he

3 gets into a confrontation with a staff member, gets into a

4 confrontation with his cell partner, gets in confrontation with

5 somebody in the chow hall, somebody in the school. You know,

6 fights occur and -- amongst all the population, but G3's

7 certainly have that opportunity, as well.

8 Q. So really it's up to that individual --

9 A. Yes.

10 Q. -- meaning the opportunities are there --

11 A. Sure.

12 Q. -- if he chooses?

13 A. Sure.

14 Q. Let me ask you this. You spent some time on death

15 row as a Major; is that correct?

16 A. I did, yes.

17 Q. The most secure unit in the prison system.

18 A. One would hope, yes, sir.

19 Q. And they are locked down 23 of 24 hours on that

20 unit?

21 A. Yes, sir. They're allowed one hour of recreation

22 seven days a week.

23 Q. By themselves; is that correct?

24 A. Yes, sir, by themselves.

25 Q. And even on the most secure unit in the prison

1 system, you still have violent encounters with those inmates;
 2 is that correct?
 3 A. Yes, we do.
 4 Q. Now, Warden Nelson, I asked you if you could just to
 5 bring some potential items that you have seized throughout your
 6 time in the prison just to illustrate to the jury how creative
 7 some inmates could get. Did you, in fact, bring those here
 8 today?
 9 A. Yes, sir, I did.
 10 Q. Do you mind pulling those out and describing what
 11 you brought for the jury?
 12 THE COURT: Did you bring weapons into our court
 13 building? Just kidding.
 14 A. These are just some confiscated weapons that we
 15 found in common areas. Obviously, not in any type of
 16 litigation at this time, but these were just some unique ones.
 17 This one is made out of cardboard that they've taken, and this
 18 is a typewriter rod out of a typewriter that we sell --
 19 offenders are allowed to possess and even death row offenders
 20 are allowed to possess a typewriter that they can purchase out
 21 of a unit commissary. And they take that rod out. They can
 22 split it in half so it makes two weapons because this is only
 23 half of the rod. They can take it and sharpen it on the
 24 concrete. This primarily is usually thrown or projected out of
 25 a cell onto a passing by offender or staff member, either under

1 the cell or through the bars.
 2 Same thing with this. This is basically another
 3 typewriter ribbon -- I mean, typewriter rod that they have
 4 sharpened down.
 5 Same thing with this one. This one's got
 6 newspaper wrapped up on it for the use of a handle to keep it
 7 from -- from slipping if they're going to use it.
 8 This was simple pencils that they can purchase
 9 or are given. They took the erasers off, took string out of a
 10 commissary bag that we sell them, wrapped it for a handle.
 11 This one is pretty old, but it -- it could obviously be
 12 sharpened again and -- and utilized.
 13 Again, another typewriter. Obviously, those are
 14 easiest and the most opportune with these typewriters.
 15 And then we have one that's a broken broom
 16 handle or mop handle that they had and they found a screw,
 17 probably out of maintenance, and somehow was able to get it in
 18 there. And these really aren't even the creative ones. Pork
 19 chop bones, chicken bones, things that you and I would never
 20 think. We've actually seen those types of weapons, as well,
 21 inside of our institution.
 22 Q. (BY MR. JOHNSON) Is it fair to say, Warden, as best
 23 as you guys try, if an inmate wants to commit any type of
 24 violent act, he's going to have the chance to do it?
 25 A. Yes, sir.

1 Q. Okay. And that's no knocking of the prison system,
 2 it's just y'all have fewer guards than -- I mean, you're
 3 getting up to staff, but you have fewer guards than most?
 4 A. Right, absolutely.
 5 Q. All right. Talk to me about contraband in the
 6 prison systems.
 7 A. Contraband is any item that is not allowed for an
 8 offender to possess, and whether it be something he made,
 9 something that is brought in to them, or something he altered,
 10 such as this, this would be contraband, something he altered
 11 that would effectively change or alter our safe operations of
 12 our facility. Obviously, cell phones are a big thing right
 13 now. Probably seen it on the news. Staff and visitors
 14 bringing in -- attempting to bring in cell phones to our
 15 offenders. They're making illegal phone calls. Tobacco,
 16 marijuana, illicit drugs of all types are contraband, down to
 17 pornography magazines, believe it or not, or simple pictures
 18 out of -- out of pornographic magazines are considered because
 19 they're not allowed in our prison system. Those are often
 20 found on offenders through some interdiction type, whether it
 21 be by staff or their visitors or someone.
 22 Shoes, offenders' family members will wear in a
 23 new pair of shoes in the visitation room. If they have a
 24 contact visit, they slide them off. Inmate slides it in his
 25 feet, he -- they put on his shoes, they walk out. He's got a

1 brand new pair of tennis shoes, because we restrict the types
 2 of shoes that we sell them to prevent fights, obviously, and
 3 things of that nature.
 4 Money. Money is a big contraband item inside of
 5 our prison systems. You got a little bit of money, it can go a
 6 long way. It can persuade a staff or someone else to give you
 7 items that you're not -- not allowed to have.
 8 Q. Now, Warden, is it -- again, not to knock the prison
 9 system, but is it fair to say you've had some issues with some
 10 guards, either smuggling in some type of contraband relating to
 11 cell phones, drugs, things like that?
 12 A. Yes, sir, it is one of our interdiction points.
 13 Q. Let me ask you this, Warden. What about
 14 relationships between guards and inmates?
 15 A. Although highly discouraged, it does happen.
 16 Q. Tell us why that's highly discouraged.
 17 A. Well, for the first thing, our security is our first
 18 line of defense, and if that first line of defense becomes
 19 tainted, we no longer have that. Like I said, they are
 20 allowing them to bring in -- they'll talk staff members into
 21 bringing them the drugs, the cell phones, things where they're
 22 there committing other offenses. They're actually committing
 23 other felonies by possessing the drugs, by possessing the cell
 24 phones, making calls, things of that nature. So that's our
 25 first line of defense. Our officers -- our correctional

1 officers are trained both at the beginning and yearly on
 2 emergency responses. And so offenders gather information about
 3 our security systems and -- and our responses to our security
 4 by these staff members, because they'll tell them, hey, what
 5 are y'all doing about -- if I was to escape or if somebody was
 6 to escape, where would y'all -- where would y'all go? Oh, we
 7 go out on this street, this street, and this street. Well,
 8 that tells the offender, don't go to that street and that
 9 street, go to this one because we're going to go out there.
 10 And so it causes a huge threat to the safety and security of
 11 our institutions.

12 Q. And in your experience of 21 years being a Warden
 13 there, what type of guards do these inmates try and connect
 14 with?

15 A. They -- they try to find someone -- what I call a
 16 weaker-minded individual, or someone that has a need that is
 17 not being fulfilled in the world, whether that is a
 18 relationship, whether it is money, something. There is a need
 19 out there -- a basic need that's not being met and the offender
 20 can attempt to meet that, whether it's kind words -- and that's
 21 usually how they start out is through kind words. They will
 22 listen to our staff. They do what we call information
 23 gathering. And they may not use it themselves, but they'll
 24 pass that information on. Where do you live? What kind of car
 25 do you drive? How many kids? They try to build a commonality,

1 and then they build on a relationship from there.

2 MR. HEALY: Thank you, Warden.

3 Judge, I believe that's all the questions I have
 4 right now.

5 CROSS-EXAMINATION

6 BY MR. JOHNSON:

7 Q. Ms. Nelson, the bottom line is -- the prosecutor
 8 keeps saying not to blame the prison system, not to blame the
 9 prison system, but the bottom line is the prison system is a
 10 pretty well run organization, is it not?

11 A. Yes, sir, absolutely.

12 Q. And when we talk about absolutely well run, we're
 13 talking about there are people down there that are well trained
 14 -- I mean, they undergo -- they undergo constant training, do
 15 they not?

16 A. Our correctional officers undergo at least 40 hours
 17 per year -- a minimum of 40 hours per year.

18 Q. And they're trained before they come down there?

19 A. Yes, sir, they are.

20 Q. And these individuals are -- are good at what they
 21 do, are they not?

22 A. For the most part, yes, sir.

23 Q. And the bottom line here is that you have -- at the
 24 prison system you have the mechanisms and the abilities to
 25 control individuals and to do everything possible to prevent

1 them from being dangerous, do you not?

2 A. As technology gets better, obviously, our security
 3 practices get better. But as we get better, so does the
 4 offender population. My staff are there 8 to 12 hours a day.
 5 The offenders are there 24 hours a day, seven days a week, and
 6 they observe our practices and our procedures. So as they know
 7 them, they can figure out how to countermand some of our
 8 procedures, basically.

9 Q. But the bottom line is in response to my question,
 10 y'all are able to control individuals, are you not, by both
 11 classification and housing -- housing alternatives?

12 A. We -- yes, sir, we try and -- but obviously we don't
 13 do it all, because we wouldn't have the introduction of
 14 contraband and the assaults that we do, but, yes, sir, we -- we
 15 have some tools to -- to prevent these things.

16 Q. Right. And the assaults and the things, the
 17 contraband, those types of issues, those are the major
 18 disruptive things that occur in the prison system environment;
 19 is that correct?

20 A. Say the first part of that again.

21 Q. The assaultive type conduct and the contraband --

22 A. Yes, sir.

23 Q. -- those would be --

24 A. Yes, sir, that would be --

25 Q. -- disruptive to the prison system?

1 A. That and our gang activity, yes, sir.

2 Q. Okay. And -- and just so the jury is aware, as far
 3 as your gang activity -- I mean, if someone comes into the
 4 prison classification system, no matter what their sentence is
 5 or what their offense is, if they come in and they're one of
 6 the members of the known violent prison gangs, they're
 7 automatically going to go to Ag Seg, are they not?

8 A. Yes, sir, if they're -- if they are a member of one
 9 of our seven recognized gangs. Now, we have other gangs that
 10 are recognized, but they are not -- they're not automatically
 11 placed into administrative segregation.

12 Q. So you think -- I mean, so -- so when we're talking
 13 about doing things to lessen the impact or the possibility even
 14 of violence out of certain types of people, if you're a gang
 15 member or one of those enumerated gangs and you come in for car
 16 theft, you're going into Ag Seg?

17 A. Yes, sir. If they're one of our recognized -- our
 18 seven recognized that we seg --

19 Q. And you -- I'm sorry. I didn't mean to speak over
 20 you.

21 A. I'm sorry, we place them in Ag Seg.

22 Q. And y'all do that to maximize the environment of the
 23 penitentiary for both safety and --

24 A. Safety and security, yes.

25 Q. Okay. Now, Warden, the prison down there -- and

1 it's -- I mean, this is not a situation where -- I mean, we're
 2 talking this is all steel bars and concrete, is it not?
 3 A. For the most part, yes, sir. I have open dorms that
 4 are very limited to bars, but, yes, sir.
 5 Q. Okay. Are those open dorms -- are those open dorms
 6 the type that G3's would be housed in?
 7 A. Could be. Possibly, yes, sir.
 8 Q. Okay. You're talking about the cell block itself?
 9 A. No, a dormitory situation which would house as few
 10 as 36 or as many as 107, and some of the dorms could house G3
 11 offenders, as well.
 12 Q. And the -- the staffing on each of these individual
 13 blocks is done by what?
 14 A. Is done by a staffing plan. For each facility, it
 15 is proved -- obviously approved all the way through to our
 16 executive branch of our division -- of the Institutional
 17 Division. Based upon the custody levels that are kept, G1's,
 18 2's, and 3's usually is one staff member per dormitory area.
 19 Cell blocks usually one. G5 there would be two to a cell block
 20 area.
 21 Q. Okay. And when you described for the jury a little
 22 while ago, you talked about each person has a certain amount of
 23 time that they're -- we know they're going to be in their cell
 24 block for purposes of sleeping, and then we have a known amount
 25 of time that that person is going to be assigned to a work

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1 detail; is that correct?
 2 A. Correct. If they are work capable, yes, sir.
 3 Q. Right. And basically everybody that is work capable
 4 is assigned to a -- to a job?
 5 A. Yes, sir.
 6 Q. And required to be there for a certain amount of
 7 time?
 8 A. Yes, sir.
 9 Q. And you told the jury that once those individuals --
 10 if they're not sleeping, if they're not at work, then they're
 11 basically free to -- to go to the rec halls, the dining halls,
 12 or law library; is that correct?
 13 A. Yes.
 14 Q. And that's not really -- I mean, that's not
 15 completely an accurate picture as to how this -- this transport
 16 of these individuals occurs, is it? I mean, the prison system
 17 is not just like a college campus where if you're not asleep,
 18 you can just walk across campus and go over to do what you want
 19 to do, is it?
 20 A. No, and -- like our library, we have particular
 21 hours for particular living areas, for instance. Open five
 22 days a week, and we will call a particular housing area -- so
 23 if there's 50 of them in there and they want -- all want to go
 24 to the library, we will -- they can all go to the library.
 25 They don't -- they're not necessarily escorted. We just call

1 them, say anybody want to go to the library. Same thing with
 2 commissary. We'll call -- we need 15 people that want to go to
 3 the commissary, they're let out of that housing area and they
 4 go. When --
 5 Q. Whether --
 6 A. -- we call -- I'm sorry. When we call for feeding,
 7 it's usually 20, 30 at a time. First 20, we let them out the
 8 door, they go to -- they walk unescorted to a dining hall.
 9 They eat in there. And then once they're through, they get up
 10 and then they walk back to their housing area.
 11 Q. But they're -- but they're expected to be in one
 12 place or another, so y'all know where they're going to be; is
 13 that correct?
 14 A. We should. Okay. Our staff members are supposed to
 15 log them out when they leave. Where are you going? Law
 16 library. You going to the regular library? Medical -- things
 17 of those nature -- medical and education we have what we call
 18 lay-ins or a pass. An offender would have one of those, would
 19 show the staff member, I have a lay-in to go to the Medical
 20 Department. They're supposed to log them in and out, but when
 21 you have mass turnouts, an inmate goes -- tells you he's going
 22 to the chow hall to eat, very possibly he could end up in the
 23 Medical Department. Very possible he could end up in the
 24 Education Department. He could end up in the mailroom without
 25 really a whole lot of confrontation between Point A and Point

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1 B.
 2 Q. Well, in fact, I mean, Warden, even when you travel
 3 -- when you travel around the penitentiary, I mean, when you go
 4 from one area to the next, even you -- the penitentiary that
 5 you're the senior warden of, you're required to show your badge
 6 before you can go through a door, aren't you?
 7 A. Not once I'm inside my facility, no, sir. Once I'm
 8 inside, we have certain checkpoints at our front gates and at
 9 our -- what we call control pickets, but beyond those gates,
 10 then we can enter housing areas or any of that without an I.D.
 11 card.
 12 Q. Okay. But when you're going from one of these
 13 control units, from one section of the penitentiary to the next
 14 section, you are required -- for even the Warden to show your
 15 I.D. to go from one area to the next?
 16 A. What are you calling sections?
 17 Q. Well, from going through the -- from like the
 18 housing units into the work units, like --
 19 A. No. No, we're not required. It -- and it depends
 20 on the layout of your facility. Some of them you -- there are
 21 no gates or anywhere that you would require to be. If -- if we
 22 had it gated off and we have it staffed, potentially you may
 23 have to show your I.D. And the same thing with the offenders,
 24 they may have to show their I.D., but chances are, if they live
 25 in a particular building, they can walk in that building. Or

1 if they don't live in that building, they easily get over into
 2 other -- other offenders' buildings.
 3 Q. And are these -- is this -- what you're talking to
 4 now, is that in response to all offenders of all the different
 5 levels or just through the G1 to the G3 levels?
 6 A. The G1's through the G3's. Most of our G4
 7 facilities now are -- that house them, we put wristbands on
 8 them. Of course, they're able to manipulate that, but we
 9 attempt to identify them with a band -- a wristband of a
 10 particular color. But your G1's through G3's -- now, most of
 11 your G1's in most of your facilities there, again, have a --
 12 have a plastic wristband on because that allows them access to
 13 our outer perimeters.
 14 Q. And these G3's -- as you testified, G3's are going
 15 to be classified because -- as the same as anybody else doing a
 16 50-year sentence and done less than 10 years of their
 17 sentence --
 18 A. Yes.
 19 Q. -- is that correct?
 20 A. Yes, sir.
 21 Q. And you said earlier that one of the things that's
 22 absolutely true is that the propensity for violence from a
 23 particular offender, it's not correlated to -- to what crime
 24 they're down there for, is it?
 25 A. Oh, no, absolutely not.

1 Q. Okay. So -- and so just saying that someone is
 2 doing life without parole for capital murder, that as -- as a
 3 Warden, you can absolutely tell this jury that doesn't mean
 4 that that person is by study or by practice going to be having
 5 more propensity to ever commit an act of violence, is he?
 6 A. No, anybody.
 7 Q. And, in fact, a person down there that's serving
 8 life without parole for capital murder, it's strictly going to
 9 be an individual -- trait of that individual as to whether or
 10 not he is going to do something?
 11 A. Right. I think I testified that it's up to that
 12 individual person for that propensity.
 13 Q. Okay. But you told -- you testified earlier that as
 14 far as life without parole and -- I mean, what do you think are
 15 the factors that are most important in looking at the
 16 propensity of an individual to violate your rules?
 17 A. Mostly opportunity, honestly. Opportunity and
 18 attitude, you know. And I think -- I have seen anything from
 19 someone that's getting ready to parole may have less of a
 20 propensity to commit a violent act than someone who's not ready
 21 to -- that doesn't have -- hasn't seen parole or isn't going to
 22 see -- see them for a while, but it's an individual character
 23 basis.
 24 Q. And it has absolutely -- and you'll testify, it has
 25 absolutely nothing to do with what they're down there for?

1 A. Absolutely. There's -- there's no studies to show
 2 that capital murderers commit more violent offense once inside
 3 prison walls than DWI people. I mean, there's -- I don't know
 4 of any statistics.
 5 Q. And in fact, ma'am, the truth of the matter is that
 6 there is -- for the level of inmates that are there, there's a
 7 -- there is actually a small amount of criminal acts of
 8 violence committed by -- by a great proportion of the
 9 prisoners; is that correct?
 10 A. That's -- that's fair. That would be fair to say,
 11 yes.
 12 Q. Okay. And have you done anything or did the
 13 District Attorney ask you to do anything in this case in
 14 relation to this particular Defendant, or did you just come
 15 down here to testify in general as to the information that
 16 you've provided?
 17 A. I looked at his prior incarceration record as -- as
 18 it's available to me on our computer system.
 19 Q. Okay. And why did you do that?
 20 A. Just to see where he had been assigned and anything
 21 that might trigger any -- any signs or activity that -- that
 22 you may -- he may need to question.
 23 Q. Okay. The weapons that you've brought out here -- I
 24 mean, just -- I mean, I think you were clear, but just to make
 25 sure, these are just things that you picked up over the years

1 of being down there?
 2 A. Yes, sir.
 3 Q. And -- and you're here -- I mean, it's obvious that
 4 you know what the issue is, that these jurors have to decide in
 5 this case --
 6 A. Yes, sir.
 7 Q. -- is that correct?
 8 A. Yes, sir.
 9 Q. And that's -- that's basically -- how long have you
 10 been doing this?
 11 A. Probably since I was assigned to death row which was
 12 shortly after April of 2004. I've testified in a selected
 13 amount of trials.
 14 Q. Okay. How many would you say you've testified in?
 15 A. Probably five -- four or five here in Dallas, and
 16 several in Harris County, and a couple in Tyler -- I believe
 17 two in Tyler. But most of those were re-trials in Harris
 18 County or mental retardation trials.
 19 Q. And what is it about you that brings you as the
 20 spokesman, I guess, or do you consider yourself kind of the
 21 spokesman for the -- for TDC --
 22 A. No, sir, I do not.
 23 Q. So what exactly -- what do you do?
 24 A. I have no idea. I mean, if you're asking why I
 25 received a subpoena, I don't have an answer to that.

1 Q. Okay. Do you know a fellow of named A.P. Merillat?

2 A. I'm familiar with him. I don't personally know him.

3 Q. He's the guy that used to do this before you started

4 doing it, isn't he?

5 A. I -- he's testified in a few of the trials. I

6 believe one and maybe two. Like I said, I've only heard his

7 name. I've never -- I think I met him once in passing, but I

8 don't know him personally. I don't know what he does.

9 Q. Okay. And you said earlier -- and -- and just in

10 response to the prosecutor had asked you, but you had given

11 some testimony in another death penalty case in which you had

12 testified incorrectly in regards to classification matters?

13 A. Uh-huh.

14 Q. And I mean, you've given us quite a bit of

15 information today that would -- I would assume would be

16 applicable to -- in regards to classification housing and all

17 of these different areas. What kind of assurance do we have

18 today that your testimony is accurate in regards to what you're

19 telling us today?

20 A. Pull the classification plan behind me. I would

21 imagine the -- the latest classification plan would be -- I

22 guess would be the only thing you would have to stand on behind

23 my testimony.

24 Q. And you are familiar with the up-to-date

25 classification areas?

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1 A. Yes, sir. Yes, sir.

2 Q. Okay. Warden, I believe that's all the questions I

3 have for you at this time.

4 A. Okay.

5 REDIRECT EXAMINATION

6 BY MR. HEALY:

7 Q. Warden Nelson, isn't it, in fact, true I told you

8 this morning I like bringing you down here because you just

9 tell it as it is?

10 A. Okay. He did say that. You know, it's -- I receive

11 nothing for this, but, you know -- and like I said, I don't

12 have a clue why they just -- when I started doing them.

13 Q. You present it in a fair, and you just basically say

14 what's there?

15 A. I try to, yes, sir.

16 Q. And we appreciate that.

17 Real quick, what I want to touch on, Mr. Johnson

18 brought up two issues, talking about parole and -- versus life

19 without parole. And I wasn't going to talk about this in the

20 beginning, but would you agree, Warden, based on your 21 years

21 of history, that parole gives prisoner incentives to be good?

22 A. Yes, sir.

23 Q. I mean, is that a big kind of way the prison system

24 works?

25 MR. JOHNSON: Excuse me, Judge. Just so the

1 record is clear, unless I said it in my sleep, I don't recall

2 bringing up that particular issue. I'm going to object to this

3 as being outside the direct -- or outside the scope of redirect

4 and it was not crossed on.

5 THE COURT: Well, I'm going to overrule -- the

6 objection is overruled. The Court finds that the response that

7 was given was an appropriate response to a question elicited

8 from the Defense lawyer -- Defense counsel.

9 Q. (BY MR. HEALY) You can answer it, ma'am.

10 A. Yes, parole is -- is an incentive for some better

11 behavior, obviously. They don't want -- they don't choose to

12 be there, and if they have that opportunity for parole, their

13 behavior obviously is -- is much better.

14 Q. And obviously when somebody gets a life sentence

15 without parole, there's no incentive for parole?

16 A. Yes, absolutely.

17 Q. Okay. And then also Defense counsel asked you, and

18 I didn't go into this on direct examination, about looking at

19 his records. Do you remember that line of questioning?

20 A. Yes.

21 Q. And is it, in fact, true I had you look at his

22 records when he was in prison in the early 90's?

23 A. Yes.

24 MR. HEALY: Judge, can we approach real quick?

25 Take two seconds, Judge.

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1 THE COURT: Yes.

2 (Sidebar conference.)

3 THE COURT: Ladies and gentlemen, we're going to

4 take a quick break and then finish -- we're going to finish up

5 here and then go to lunch. We got to take up a couple of

6 things.

7 THE BAILIFF: All rise.

8 (Jury excused from courtroom.)

9 MR. HEALY: And, Judge, I may be able to clear

10 it up. Can we go off the record a second, Judge?

11 THE COURT: Off the record.

12 (Discussion off the record.)

13 THE COURT: Go back on the record.

14 MR. HEALY: Okay. Judge, all I want to ask the

15 Warden is: After looking at his records, did you determine

16 that he moved up and down the classification system when he was

17 in prison. She knows why that is, based on her experience --

18 MR. JOHNSON: Judge, I'm going to ask that the

19 witness be excused from this while we're arguing the point.

20 THE COURT: Fair enough.

21 MR. BEACH: That breaks your heart, doesn't it?

22 (Witness excused from courtroom.)

23 THE COURT: What's the Defense's response?

24 MR. HEALY: Do you want me to finish, Judge? I

25 just want the record to be clear that Mr. Johnson asked the

1 question, did you look at his record personally, as well.

2 THE COURT: I understand that.

3 MR. JOHNSON: That's all I asked. I didn't go

4 into a single thing about his records. I just asked if she

5 had -- I didn't even ask her if she was asked to look at them.

6 THE COURT: I understand that, I mean, but

7 you're objecting to this. I'm not -- if it's objectionable,

8 I'm not going to find that you opened the door. I don't even

9 know -- I don't know why that wouldn't be relevant. Can we --

10 can we agree that it's relevant? I'm just trying to frame the

11 issue right. Are you saying that his -- that his prior actions

12 in prison were -- aren't relevant?

13 MR. JOHNSON: Not through this witness. This

14 witness is being offered --

15 THE COURT: No, no, no. It doesn't matter --

16 I'm talking -- so you're -- they're relevant, but you're saying

17 this is not the proper witness?

18 MR. JOHNSON: If they're going to bring someone

19 in to actually prove that was -- there's some type of

20 infraction that caused his housing status to be changed, as

21 opposed to just offering a conclusionary statement that his

22 housing was -- if his housing status was changed, it was due to

23 a -- a disciplinary action because I know for a fact that the

24 State doesn't know what they're -- what allegations they're

25 claiming caused his housing status to be changed.

1 THE COURT: Okay. That -- that's the question.

2 MR. JOHNSON: Yes.

3 THE COURT: Okay. Is this the proper witness to

4 talk about his prior conduct in jail?

5 MR. HEALY: Specifically -- to each specific

6 instance?

7 THE COURT: Yes.

8 MR. HEALY: I'll concede, no, this isn't the

9 proper witness.

10 THE COURT: Okay.

11 MR. HEALY: But to say that they -- that she

12 reviewed his records as a classification expert and can see

13 from his records that he moved up and down the classification

14 system, I feel clearly in her 21 years she can explain that.

15 MR. JOHNSON: They're asking her to explain

16 based on conclusions.

17 THE COURT: But what happens when he asks her

18 why, and she says I don't know?

19 MR. BEACH: She does know.

20 MR. HEALY: Well, she does know.

21 MR. JOHNSON: No, she doesn't.

22 MR. HEALY: Yes, she does.

23 THE COURT: Bring the witness in.

24 MR. HEALY: Okay. Ask her.

25 THE COURT: Bring the witness in. Let's find

1 out.

2 MR. JOHNSON: But it goes back to the issue,

3 Judge, that this is not the proper witness to get into it with.

4 THE COURT: Well, let's find out. I don't know.

5 MR. JOHNSON: Well, he already concedes that

6 she's not.

7 MR. HEALY: To say specifically he fought

8 so-and-so, this may not be the proper witness, but not to --

9 (Witness brought forward.)

10 THE COURT: Y'all can sit down. Just because

11 I'm standing up doesn't mean y'all have to. Sit down, please.

12 THE WITNESS: Yes, sir.

13 THE COURT: Warden, we had some other questions

14 regarding Mr. Green's records. When you say you reviewed his

15 records prior to coming in, what does that mean?

16 THE WITNESS: Well, we have access to what is

17 called the IMF, the inmate main frame. Basically it has

18 visitation, his commitment screen, his assignment screen. Now,

19 I did not get to see his -- any of his disciplinarys because

20 of his -- the length that he had been out has already gone to

21 archive. And -- and so because of the massive amounts of

22 offenders that have come and gone in our prison system, we --

23 our database obviously is not large enough to maintain all of

24 those types of files, so a lot of things -- when you say I've

25 looked at his records, I was very limited because most of his

1 things have gone to archive.

2 I did see his -- his -- the disciplinarys that

3 he showed me this morning that reflect changes in custody

4 levels, and that's clearly marked on the top. It's typed, and

5 it's clearly marked on the top where he went from -- at that

6 time they weren't G levels. They were MI's -- or MO's, MI's,

7 ME's, and CC's. That was the -- prior to the Texas 7, that was

8 our classification. And when I looked at those disciplinarys,

9 he was an MO at one time, which was an outside trusty, a

10 minimum out. He was an MI, which was a minimum in offender,

11 which was probably a general population at that time. And at

12 one point he went ME, which was medium custody. And there,

13 again, the classification system hasn't changed -- it's changed

14 dramatically since the Texas 7, but since -- and since those --

15 those disciplinarys, but it was medium custody, what we now

16 call G4's, but it was because of -- obviously, disciplinarys,

17 because that's why you got into medium custody.

18 And then CC, which at that time was close

19 custody, which is now what we consider our G5 custody levels,

20 but that's based upon that. And I -- I can look at it and tell

21 you that he had an influx from -- everywhere from a minimum

22 outside all the way to a close custody.

23 Some of the disciplinary cases, I can explain

24 why he would have been in that -- that custody. I wasn't on

25 that classification committee, so I can't tell you what their

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1 vote was or how, but I can tell you based upon his -- those
 2 disciplinaries, his custody level reflects every custody level
 3 that we at that time had. That's -- that's what I can show.
 4 THE COURT: Do you have some questions, Mr.
 5 Johnson?
 6 (Outside the presence of the jury, defendant
 present.)
 7
 8 VOIR DIRE EXAMINATION
 9 BY MR. JOHNSON:
 10 Q. Yes, ma'am. But you're saying that the -- that the
 11 classifications that you are now saying that he went through
 12 are different than the ones that you've testified to today?
 13 A. Yes, sir, they are.
 14 Q. And as far as when you reviewed these records, these
 15 are not anything that you did in response to the testimony that
 16 you came down here to offer --
 17 A. No.
 18 Q. -- in regards to running of the prison system?
 19 A. No. No, sir. No, sir.
 20 Q. Okay. And in response to any questions that I asked
 21 you -- or that he asked you in direct or I asked you in
 22 redirect, you were never asked about any particulars of
 23 anybody's records, were you?
 24 A. No, sir, I was not.
 25 Q. And as far as you said you were not able to review

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1 a -- as an officer or as an administrator in your position as a
 2 Warden, you did not review these records prior to coming down
 3 here to testify. The things you're talking about that you
 4 reviewed were spoon-fed to you this morning by the District
 5 Attorney?
 6 MR. HEALY: I love his characterizations.
 7 A. Okay. Yes, sir. I -- I was -- he -- he provided me
 8 with his disciplinary cases, yes, sir.
 9 Q. (BY MR. JOHNSON) He basically showed you some
 10 particular documents and said that he wanted you to look at
 11 them and then come in here and be -- and hopefully the Judge is
 12 going to let you testify about them; is that right?
 13 A. He asked me about the custody levels, yes, sir, and
 14 asked me to review those disciplinaries.
 15 Q. Well, he didn't show you -- you haven't seen all the
 16 records in response to this Defendant. You were just shown the
 17 ones that the prosecutor spoon-fed you and wanted you to be
 18 aware of in case some questions were asked?
 19 A. Yes, sir, I saw the disciplinaries, yes.
 20 Q. So if I had for you to -- when you said that you're
 21 not aware of the disciplinary records and the reasons why any
 22 status changed, it would all be conclusory on your opinion,
 23 would it not?
 24 A. Yes.
 25 Q. And, in fact, it would be conclusory because a

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1 person could go from what even at that time was MO to MI to ME,
 2 and those things could have been due to not -- to strictly --
 3 strictly and totally and completely minor infractions on a
 4 repetitive basis, could it not?
 5 MR. HEALY: Judge, are we going outside the
 6 hearing?
 7 A. I'm not -- I --
 8 THE COURT: The jury --
 9 A. I'm not going to testify to that one way or the
 10 other.
 11 THE COURT: The jury is not present --
 12 MR. HEALY: I know, I'm just saying we're going
 13 outside -- we're just going -- if she knows why somebody would
 14 move up and down.
 15 MR. JOHNSON: Well, Judge, let me tell the Court
 16 what I'm asking.
 17 THE COURT: Stop. Just -- just let him finish.
 18 This is his time to ask questions, and then you can ask
 19 questions.
 20 Q. (BY MR. JOHNSON) The classification now from MO to
 21 MI to ME, even at that time could have been due to just
 22 repetitive nature of minor infractions; is that not correct?
 23 A. I'm not going to testify to that because I --
 24 honestly, I was not in the classification process as much
 25 during that time. Like I said, I can tell you that --

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1 according to those documents that he has, that he at one time
 2 was a minimum outside, all the way to a CC which was a close
 3 custody. Why, I can't tell you, and I can't tell you that it
 4 was maybe because of minors or maybe because of major
 5 infractions. I'm not going to testify to that, because I don't
 6 know. I don't have his classification records, so I can't tell
 7 you that.
 8 Q. Again, you weren't given the classification records
 9 so you could come in and testify with authority as to these
 10 classification procedures; is that correct?
 11 A. All I can testify to is what the documents provided
 12 showed.
 13 Q. And he provided you with a few documents in regards
 14 to particular infractions, correct?
 15 A. He provided me with 13, I believe, disciplinary
 16 infractions.
 17 Q. If an individual, as it was classified at that time,
 18 an individual was housed and was confined in close custody,
 19 would he be allowed to work in the field?
 20 A. Yes.
 21 MR. JOHNSON: Judge, I believe that's all I have
 22 as far as the questions.
 23 VOIR DIRE EXAMINATION
 24 BY MR. HEALY:
 25 Q. Warden, did I spoon-feed these, or did I ask you a

1 couple of weeks ago to pull up all his --

2 A. You -- you absolutely did, and I -- I think at that
3 time I did explain to you that some of those may be archived
4 due to the '91, '92 records. And you -- I explained that to
5 you, I think on the telephone, that I was not able to review
6 his disciplinaries. So I think his last visitation screen, I
7 think was pretty much all I saw. And then you provided the 13
8 disciplinaries to me this morning.

9 Q. And shockingly, instead of driving out to where you
10 are, you driving out here, I said I'll give you the rest of
11 those records today when you get here?

12 A. Yes, sir, you did.

13 Q. And that's what we -- that's why I had you get here
14 early?

15 A. Yes, sir, you did.

16 Q. When the spoon-feeding took place?

17 A. Yes, sir.

18 Q. Now, let me ask you this, Warden. Just based on
19 your knowledge of being a -- a Warden for 21 years, there's no
20 doubt when he moved to close custody there was -- he was not a
21 model prisoner; is that correct?

22 A. That would be correct.

23 Q. And there's no doubt -- no doubt, 100 percent, based
24 on his disciplinary records, he moved from the worst of the
25 general population to the best of the general population?

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1 A. Yes, sir, he did.

2 MR. HEALY: That's all I have, Judge.

3 MR. JOHNSON: Still it's not relevant, Judge, or
4 this is not the proper witness to do it with. She's not --
5 she's not reviewed in entirety all of his different reasons.

6 MR. HEALY: I gave her exactly what TDC has,
7 unless you have something else to provide.

8 THE COURT: I know. I just think that there
9 is --

10 MR. JOHNSON: Plus, she's already testified,
11 Judge, that she wasn't familiar with the classification and the
12 classifications procedures made back at that time.

13 THE WITNESS: For him -- for particularly him.

14 THE COURT: I know.

15 MR. JOHNSON: Just for purposes of the record,
16 can I ask her a few more questions, Judge?

17 THE COURT: You may.

18 VOIR DIRE EXAMINATION

19 BY MR. JOHNSON:

20 Q. Warden, in fact, what you testified to earlier is
21 that due to certain events that have occurred in the last -- in
22 the last 20 years actually in the prison system, you have
23 actually -- TDC has changed its classification categories
24 completely, have they not?

25 A. Yes, sir, they have.

1 Q. And they've changed their classification decision

2 making process, have they not?

3 A. Yes, they have.

4 Q. They've changed their classification programs that
5 they use -- classification decisions are actually made by a
6 computer, are they not?

7 A. They are recommended by a computer, yes, sir.

8 Q. Right. Everybody that goes down to diagnostics is
9 going to be given a certain set of psychological and
10 psychosocial battery of tests. All of the information about
11 that offender is going to be placed in a computer program and
12 it's going to spit out a classification recommendation,
13 correct?

14 A. It is.

15 Q. And that's a relative -- that's a relatively new
16 feature, is it not?

17 A. Yes, sir, it is.

18 Q. And, in fact, after the classification decision is
19 made by a computer, then the -- the unit -- the classification
20 committee at the actual -- at the individual prison has an
21 opportunity to either overturn it themselves or seek to have
22 that classification decision overturned; is that not correct?

23 A. Yes, sir, they do.

24 Q. And that's a relatively new procedure, is it not?

25 A. Yes, sir. Yes, sir, it is.

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1 Q. And that's a procedure that you're --

2 COURT REPORTER: I'm sorry, slow down.

3 Q. (BY MR. JOHNSON) And that's -- that's the
4 procedures that you're familiar with, correct?

5 A. Yes, sir, it is.

6 Q. Okay. And the classification decisions that are
7 made on the unit are made by the actual unit -- at each
8 particular unit, are they not?

9 A. Yes, sir, they are.

10 Q. And so as to what the decision or what -- why the
11 decisions were made in regards to a particular individual
12 housed back in the 90's, you were not -- you were not privy to
13 those?

14 A. Exactly.

15 Q. You're not familiar with the criterion that was
16 actually used on those particular individuals, are you?

17 A. Absolutely not, no, sir.

18 Q. And you can't testify with authority as to why
19 anybody made a particular classification decision on any
20 particular inmate because you have not reviewed the entirety of
21 the records to have that information?

22 A. That's correct.

23 MR. JOHNSON: And that's all I have, Judge.

24 MR. HEALY: Judge, that sounds like a great
25 cross examination right there.

1 MR. JOHNSON: It goes to the fact everything now
 2 is conclusory.
 3 MR. HEALY: Well, I mean, she said though --
 4 THE COURT: Please don't talk over each other.
 5 MR. HEALY: She said repeatedly somebody is
 6 going to move up and down based on disciplinary action. Does
 7 she know specifically what disciplinary -- I was not going to
 8 go into those, because I didn't think those would be admissible
 9 through this witness. But she knows for a fact --
 10 THE COURT: Okay. I'll -- I'll try something.
 11 All right. Will you hand her State's or Defense Exhibit 2?
 12 (Document handed to witness.)
 13 THE COURT: Ma'am, this is something that
 14 earlier there was testimony regarding an incident that happened
 15 in a dining hall. And there -- is that -- was that reviewed by
 16 you?
 17 THE WITNESS: This particular document?
 18 THE COURT: Not the document, the incident.
 19 THE WITNESS: No, I did not see anything that --
 20 any -- anything in the 13 records that I reviewed.
 21 MR. HEALY: Now, Judge, just to clarify, I did
 22 show her the report.
 23 THE WITNESS: It was the report. There was no
 24 disciplinary record --
 25 MR. HEALY: Not the OIG one, the actual --

1 THE WITNESS: I'd never seen anything of this
 2 nature.
 3 MR. HEALY: It's two different units or
 4 entities.
 5 THE COURT: Okay. But was the Defendant
 6 sanctioned for a disciplinary reason on the classification
 7 based on that event?
 8 THE WITNESS: I -- I would have to look at
 9 his -- at them again to -- to make sure, because he does move
 10 from custody level to custody level, and I don't know -- I
 11 don't have an exact time frame of when this incident occurred
 12 to when he went to that more restrictive custody level.
 13 (Document handed to witness.)
 14 MR. JOHNSON: Well, Judge, I'm going to object
 15 to the prosecutor up there handing her more things that he --
 16 he wants her to look at. We don't know what these are.
 17 MR. HEALY: The Judge told me to bring those.
 18 THE COURT: No, no, I asked him to do that.
 19 There's a point to what I'm doing. Just bear with me on this.
 20 I'm trying to get to the bottom -- I'm trying to understand how
 21 this classification system works. And the end question is, is
 22 there a review procedure on disciplinary levels that's
 23 reflective of -- if a mistake gets made, does a person go back
 24 to the same level?
 25 THE WITNESS: Any -- any major infraction which

1 on these -- if I may, on this disciplinary, where it says grade
 2 and MI, any -- where there would be a major would be an MA.
 3 Those disciplinarys -- here's -- here's one particularly, that
 4 he will be seen by the Unit Classification Committee, so at
 5 that point the Warden who signed down here, reviews his -- the
 6 date and time he was notified, did we run it within the seven
 7 days -- the required seven days, did we have the documentation,
 8 did he plead none, guilty, or -- or guilty, and what were the
 9 sanctions given in this disciplinary case. Then -- but
 10 every --
 11 THE COURT: This isn't just a computer --
 12 there's more to it -- of the records that you've reviewed, so
 13 you can talk about the different classifications or sanctions
 14 that were given?
 15 THE WITNESS: Yes, yes, because down here on the
 16 bottom is basically who the hearing officer was, usually a
 17 captain or above. These minors could be particularly run by a
 18 lieutenant. Then the offender signed it. And then at this
 19 point, a Warden signs it. At the end, once the case has been
 20 processed, they're brought to our offices. And basically what
 21 has happened, we review the time restraints to make sure that
 22 we were well within our time restraints. Did we give them
 23 something that wasn't within our minor -- our minor case, say
 24 45 days of commissary restriction may not be applicable to a
 25 minor, but it would be to a major so were we within these

1 realms, and then we signed off on them.
 2 Now, with that being said, there, again, I don't
 3 have his classification folder. And in all fairness, he has a
 4 major case here, but he -- but he received what we call minor
 5 placement, so it would have been documented as an MM, major
 6 case given minor punishment, because he was given less than
 7 solitary or less -- no good time lost, basically.
 8 Here he's got a major disciplinary case where he
 9 got solitary, and he was reduced from an S -- SA3 to an SA4,
 10 which means his time earning status reduced by about --
 11 probably 15 days every 30 days or so.
 12 THE COURT: What was that for?
 13 THE WITNESS: This one is he had an assault on
 14 another offender and --
 15 THE COURT: Let me ask this. Two inmates get in
 16 a fight. Are they both sanctioned?
 17 THE WITNESS: Not necessarily. If one offender
 18 obviously -- and it goes by the report of the staff and the
 19 witnesses, both inmate and staff witnesses. If one offender
 20 walks up, begins plummeting another offender, that offender
 21 doesn't fight back or folds or stops when staff tells them,
 22 he -- he or she may not receive a fighting case because it was
 23 more of an assault with -- and -- and maybe some self-defense
 24 to try to get them off, pushing them off or something of that
 25 nature.

1 Now, they start swinging fists, kicking, they're
 2 going to probably be sanctioned with a fight, but if they're
 3 just pushing them off, trying to get away from them, holding on
 4 to them to stop the assault, the aggressor would be the
 5 assault -- would receive an assault. The other offender would
 6 probably not receive anything. But if it's an equal fight,
 7 both of them are swinging fists, both of them are kicking,
 8 throwing things at each other -- and like I said, that's based
 9 upon the statements of -- of staff and -- and witnesses in the
 10 area.

11 THE COURT: Then that's considered an assault?

12 THE WITNESS: That's considered --

13 THE COURT: Even if it's mutual combat, that's
 14 considered assault?

15 THE WITNESS: No, it would be considered a fight
 16 with an offender. It's a separate code.

17 THE COURT: Separate code?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay.

20 MR. JOHNSON: Judge, if I might -- I mean, the
 21 bottom line here is she's already testified she hasn't seen his
 22 classification file, she's not familiar with the classification
 23 decisions made at that time. She -- this is just not the right
 24 witness to testify to these matters. And, Judge, I don't even
 25 think that the State is arguing that she is the right witness

1 to testify to these matters. I mean, I think the -- I think
 2 the Court is making more of a -- more of an inquiry in regards
 3 to what the State is trying to do than the State is even
 4 thinking that they're doing.

5 THE COURT: I'm just trying to get it right.

6 MR. JOHNSON: Well, I understand, and the way --
 7 the way to get it right is to -- since this witness has
 8 testified that she's not familiar with the classification
 9 decisions made on this particular inmate, she's not -- she's
 10 not qualified to testify to it. And the way -- and the records
 11 that she reviewed that have nothing to do with these questions.
 12 These are just things that she was given this morning by the
 13 prosecutor. She's not reviewed the classification records on
 14 this Defendant to be able to testify and be cross-examined in
 15 regards to classification of this Defendant. How can I
 16 cross-examine her?

17 THE COURT: That -- and that's -- that's the --
 18 that's my issue, Mr. Healy, is -- is that -- is that you're
 19 asking her these questions that -- that he -- that he has a
 20 distinct inability to be able to cross-examine because the
 21 response is going to be invariably, I don't know.

22 MR. HEALY: Cross-examine her why he moved up
 23 and down, you mean?

24 THE COURT: Right.

25 MR. JOHNSON: And let me ask -- if I could add

1 this, Judge.

2 THE COURT: You've added plenty. It's his turn
 3 to talk now.

4 MR. HEALY: I think it's being mischaracterized
 5 what we're trying to do with the Warden here, Judge. And I
 6 understand what the Court's concerns are in the sense of
 7 questioning her why he was moved up or down. I think Mr.
 8 Johnson does a great job of cross-examining witnesses. All
 9 she's doing is looking at his disciplinary reports. I don't
 10 know if maybe we should show the Court how it clearly states on
 11 there --

12 THE COURT: I can -- I can see it well enough.

13 MR. HEALY: Okay. Where it states on there that
 14 they are either minimum, inside minimum, outside, close
 15 custody, and she's able to relate what that means in today's
 16 terms of G1 through G5, that's all we're trying to get into
 17 here. And --

18 THE COURT: Here's my question. Why hasn't
 19 anyone done an intake on him? Then we'd know where he'd be
 20 classified.

21 MR. HEALY: We do know.

22 THE COURT: No, you don't.

23 MR. HEALY: He will go in as a G3 status inmate.

24 THE COURT: We don't know where he's going to be
 25 housed.

1 MR. HEALY: No, no, we don't know that.

2 THE COURT: Why hasn't anyone done that?

3 MR. HEALY: Because they'll never get that.

4 MR. JOHNSON: They don't do that until they get
 5 to diagnostics. They won't do it until they get to
 6 diagnostics.

7 MR. BEACH: Until he goes in this time.

8 MR. HEALY: Yeah. All she can do now is say if
 9 he's convicted and given life without parole, he's going to go
 10 as a G3 inmate somewhere across the state in some unit that
 11 holds G3 inmates.

12 MR. JOHNSON: G3 at best. That's not -- I mean
 13 he could go -- he could go directly into Ag Seg, but --

14 MR. HEALY: How is that?

15 THE COURT: Okay. Warden, could he go directly
 16 into Ag Seg?

17 THE WITNESS: If he has a -- like I said, if
 18 he's a member, a known admitted, recognized gang member, he
 19 potentially could. They will take into consideration some of
 20 his jail records. If he's had serious assaults, whether they
 21 were with weapons or that required treatment beyond first aid,
 22 he would have to have probably multiples of those. Chronic
 23 rule violator, basically, in jail. It's -- it's very rare that
 24 they go directly into administrative segregation, except for a
 25 violence -- a propensity to violence even while in their jail

1 behavior.

2 THE COURT: What's the process of -- and how is
3 all of this determined? You said it's done by a computer.

4 THE WITNESS: Well, we have a computer program,
5 and it gives us a recommendation. Basically, everything -- his
6 confinement record will be input into -- into our computers,
7 and they'll pull up his -- his prior incarcerations and his
8 prior custody levels. And then they'll -- they'll input his
9 jail information. But like I said, in my history from intake,
10 most of them are gang members that go directly into
11 administrative segregation. Once that information goes into a
12 computer, it gives us a custody recommendation. Now, we can
13 override that and say -- if he's a G3, you can say, well, he
14 had a serious staff assault at county jail less than a year
15 ago, we would like to recommend him to be a G4 or a G5, okay?

16 Now, State classification can override that, and
17 say, no, we want him as a G3.

18 THE COURT: How -- how long would it take for
19 you to do that for Mr. Green, the Defendant in this case?

20 THE WITNESS: Once he's in the intake process --
21 the intake process can take 30 days or so, sometimes a little
22 longer, depending on -- they have to do sociological -- and his
23 probably wouldn't take as long because we have some of his
24 prior history of sociological -- his family history is probably
25 already done. But they're going to have to ask him his

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1 questions. He has to go through a medical report. He has to
2 go through a battery of tests in that area, but it normally
3 takes around 30 days in our classification process. And then
4 State classification will give him a custody level, and then
5 they decide, based upon our -- our population where we have an
6 open bed, male -- on the male side that houses inmates of the
7 custody level that they're going to assign him.

8 MR. HEALY: Judge, I just talked to Mr. Johnson.
9 I think both sides are willing to rest on our arguments on
10 whether we get into what I wanted to ask her.

11 THE COURT: I'm going into something else.
12 This -- this is general.

13 MR. HEALY: Okay.

14 THE COURT: This is general. I've done two of
15 these cases now. Why on earth are we doing all this
16 speculation as to where he's going to be housed and guessing?
17 Why can't we make a determination of where he's going to be
18 housed?

19 MR. HEALY: Because they don't do that.

20 THE COURT: I want to know these things. I want
21 to know where he's going, and I want to know the security level
22 because that's really the indication of whether or not he's a
23 future danger is where he's going to be housed. Not all this
24 speculation that each side is -- is throwing out there. Why
25 can't we get a definite factor for a jury to look at and say he

1 is -- or he is or he is not going to be a future danger based

2 on where he is going to be in prison?

3 MR. JOHNSON: Well, Judge, we would certainly
4 argue -- from the Defense standpoint, we would certainly argue
5 that where he's going to be housed is not going to be
6 indicative at all as to whether or not he's going to be a
7 future danger. The future dangerousness issue is on the
8 propensity of the individual. We -- we both are in agreement
9 that his minimal level of security is going to be under a
10 classification of G3 in -- the truth of the matter, and
11 prosecution will agree, he could be a G4, he could be a G5, he
12 could be Ag Seg. That's based on other factors. Those --
13 those decisions aren't made about a particular individual until
14 he's gone through the Diagnostic Unit. And then -- so this
15 particular as to which prison facility he's going to be housed,
16 as the Warden just told you, that decision is going to be made
17 by a computer in response to whether -- where there's a bed
18 appropriate for the housing of him as he's classified by the
19 computer, unless it's overridden by the -- the Unit
20 Classification Committee.

21 THE WITNESS: Judge, if I can add one other
22 thing.

23 THE COURT: Sure.

24 THE WITNESS: When they get ready to be housed,
25 they look at different things, his needs, whether he has

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1 psychological needs, whether he has medical needs, things of
2 that nature. We have what we call Type 1 chronic care
3 facilities, Level 1 facilities that are all on one level. So
4 -- and then, there again, bed space. Because of our capacities
5 on every facility, we have inmates at intake that basically are
6 awaiting a housing assignment and, there again, it's done by
7 our State Classification Committee.

8 The Wardens have no input into where an offender
9 is housed or not housed on that facility. I can't call and
10 say, hey, I want an inmate moved -- this inmate moved from Beto
11 to Coffield. I don't have that authority. State
12 classification can, based upon a need.

13 So with that, comes in -- once he goes through a
14 battery of tests, both medically, psychologically, they're
15 going to look at what needs he has. If he has a need for a
16 Type 1 chronic care, does he have a need for a -- like he said,
17 if he comes in as a G4, or a G5, those are our expansion bed
18 facilities. Our 2250's have a certain custody level. So
19 really, you know, it's -- you know, and he may not be perfectly
20 suited. We don't always get it right. We're obviously a
21 fallible system. We don't always get it right, but we try.

22 The State Classification Committee does put
23 forth the effort to get to know who this offender is, where he
24 was previously incarcerated, what his institutional record was
25 then at that institution, and is he -- is he capable or -- or

1 is it best suited to send him back to the same facility he was
 2 originally incarcerated on prior. But there's no guarantees.
 3 Just because he was assigned to the Beto Unit, he may end up
 4 at, you know, Smith Unit or Clements in Amarillo. I mean --
 5 THE COURT: Is -- is part of this test that is
 6 given -- hold on a second. Y'all quit it.
 7 I mean, is part of the test and what you're
 8 gauging is -- is level of future danger to other inmates,
 9 guards, or anything like that?
 10 THE WITNESS: No, sir.
 11 THE COURT: Okay. And it's -- but it's --
 12 THE WITNESS: It's based upon his needs and
 13 our -- and our capable -- our ability to house that custody
 14 level on those facilities.
 15 THE COURT: Okay.
 16 MR. HEALY: Your Honor, I think I talked to Mr.
 17 Johnson, we're just going to move on.
 18 THE COURT: Fine. I'm just trying --
 19 MR. HEALY: I understand.
 20 THE COURT: -- to get a line on this.
 21 MR. HEALY: I understand. We're -- we're --
 22 we'll bring it through a different witness. It's in the
 23 interest of the Court to move on.
 24 THE COURT: Thank you. Okay. How many more
 25 questions do we have of the Warden?

1 MR. HEALY: I think everybody is ready to go to
 2 lunch, Your Honor.
 3 THE COURT: So this witness can be excused?
 4 MR. HEALY: I believe so, unless Mr. Johnson
 5 would like to talk about parole because that's the only issue
 6 that I brought up on redirect.
 7 MR. JOHNSON: I do have a couple of questions in
 8 regards to that, Judge.
 9 THE COURT: All right. Let's get the jury in.
 10 We're ready.
 11 (Jury returned to courtroom.)
 12 THE COURT: Thank you all. Please be seated.
 13 Let's see, you were asking --
 14 MR. HEALY: I'll pass the witness at this time,
 15 Your Honor.
 16 THE COURT: Okay.
 17 (In the presence of the jury, defendant
 18 present.)
 19 RECROSS-EXAMINATION
 20 BY MR. JOHNSON:
 21 Q. Warden, I just have a couple of other things to
 22 touch with you briefly. The prosecutor asked you a minute
 23 ago -- as he told you this morning, the reason he brings you
 24 down here is because you just kind of tell it like it is. You
 25 actually understand the -- the function that the prosecutor is

1 trying to accomplish in having you testify in these
 2 proceedings?
 3 A. Sure.
 4 Q. You understand that, don't you?
 5 A. Sure.
 6 Q. That is to show that there is a -- a potential or
 7 that in all aspects of life, even in the penitentiary, there's
 8 a possibility that something -- something could occur if the
 9 person has a propensity and the desire to engage in conduct?
 10 A. Yes, sir.
 11 Q. Okay. And again -- and in tying that to -- I mean,
 12 so basically this is to kind of give the jury a picture that --
 13 that's going to be a situation where if you have a bad person
 14 that wants to hurt somebody, he may have that opportunity to do
 15 that; is that correct?
 16 A. Yes, sir, in any level.
 17 Q. Okay. And it doesn't matter whether that prisoner
 18 is classified as G1, G2, G3, G4 or G5 or Ag Seg, does it?
 19 A. We have less than our lower custody levels, but, no,
 20 it doesn't matter.
 21 Q. The truth of the matter is there's not -- as far as
 22 we discussed earlier, in regards to the type of crime that was
 23 committed, there's no correlation to their propensity to commit
 24 violence -- criminal acts of violence?
 25 A. No, sir.

1 Q. And the prosecutor asked you about parole and the
 2 fact that parole is used in the penal system as kind of a -- as
 3 a carrot, so to speak.
 4 A. Sure.
 5 Q. And the prosecutor asked you if the -- if the parole
 6 is something that you dangle out in front and hope for better
 7 behavior; is that right?
 8 A. Yes, sir.
 9 Q. And since we've started housing individuals that
 10 have been sentenced to life without parole -- in fact, there's
 11 been no correlation to show that someone that's serving life
 12 without parole is more -- has a greater propensity towards any
 13 violent act, is there?
 14 A. No, sir, not at this time.
 15 Q. Okay. So just in response to what they were asking
 16 earlier, just because you've taken away that person's
 17 opportunity or ability to ever get parole, we know they're not,
 18 that doesn't mean that that individual is going to be any more
 19 or less likely to commit acts of violence than G1 offenders?
 20 A. It's an individual -- individual choice.
 21 Q. And -- correct. And the fact is that even someone
 22 serving a life without parole, you do have some -- you have the
 23 ability to curtail their -- their movements and their
 24 amenities, so to speak, that is in and of itself a carrot, is
 25 it not?

<p style="text-align: right;">89</p> <p>Case 3:15-cv-02197-M-BH Document 24-55 Filed 08/01/16 Page 27 of 40 PageID 5925</p> <p>1 A. Yes, sir, we have -- we have management tools.</p> <p>2 Q. You have management tools. You have the ability to</p> <p>3 restrict them, to -- to increase their level of housing. You</p> <p>4 have the ability to take away their commissary. You have the</p> <p>5 ability to take away their mail, to keep television privileges,</p> <p>6 their dining privileges, or recreation privileges -- you have a</p> <p>7 way to do all of those things, do you not?</p> <p>8 A. Not their mail.</p> <p>9 Q. I'm sorry, maybe not mail.</p> <p>10 A. No, sir, not their mail, but for the most part, yes,</p> <p>11 their -- their movements and their possessions.</p> <p>12 Q. And the truth of the matter is, ma'am, for the --</p> <p>13 for an individual that's -- even if he's not looking at the</p> <p>14 possibility of having parole, those -- those are the basic</p> <p>15 necessities of life, are they not?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And those are of great incentive to encourage an</p> <p>18 individual to act right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. You have included in each penal unit, I think you</p> <p>21 said there's 112?</p> <p>22 A. Yes, sir, currently.</p> <p>23 Q. How many of those 112 units have the ability or</p> <p>24 the -- to house prisoners of a G3 or above status?</p> <p>25 A. I couldn't give you a number right off the top of my</p>	<p style="text-align: right;">91</p> <p>1 medication or -- or through counseling, any of the problems</p> <p>2 that may be causing them or that had caused them to engage in</p> <p>3 the behavior that led them to the penitentiary?</p> <p>4 A. Yes, sir.</p> <p>5 Q. No question about that, is there?</p> <p>6 A. No, sir.</p> <p>7 Q. And you would agree with me, ma'am, that there's a</p> <p>8 lot of folks in the penitentiary that are at this very moment</p> <p>9 are being treated for mental illness?</p> <p>10 A. Yes, sir.</p> <p>11 Q. People who are in the penitentiary because they've</p> <p>12 committed criminal acts of -- acts of crime or criminal acts as</p> <p>13 a result of their mental illness?</p> <p>14 A. Sure. Yes, sir.</p> <p>15 Q. And you would agree with me, also, that you can</p> <p>16 treat those individuals, and that is going to greatly, greatly</p> <p>17 lessen their both propensity, their desire, their ability to</p> <p>18 engage in further criminal acts?</p> <p>19 A. It's certainly our goal, yes, sir.</p> <p>20 Q. It's not just your goal, but you're quite successful</p> <p>21 at that, would you not agree?</p> <p>22 A. I think our -- our penal system is very successful</p> <p>23 for the amount of offenders that we have. I think we are</p> <p>24 successful.</p> <p>25 Q. How many people -- how many people -- and if you</p>
<p style="text-align: right;">90</p> <p>1 head, probably half or better.</p> <p>2 Q. And when you include amongst the individuals in</p> <p>3 those particular institutions, there are -- both housing --</p> <p>4 there's housing and there's facilities and there's treatments</p> <p>5 available to individuals that are housed there, suffering from</p> <p>6 mental illnesses, are there not?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And those -- individual on one of those facilities</p> <p>9 that has a mental illness that is treatable, then they</p> <p>10 certainly have the ability to be treated at your facility,</p> <p>11 correct?</p> <p>12 A. At most, yes, sir. We have -- we have psych</p> <p>13 facilities or -- or what we call responsible psychotherapists</p> <p>14 or counselors on -- on most of our facilities.</p> <p>15 Q. And the psych units that you're talking about --</p> <p>16 when you talk about psych, you're talking about someone with a</p> <p>17 chronic psychiatric condition that's got to be basically</p> <p>18 watched 24/7?</p> <p>19 A. Someone who requires an inpatient medication or</p> <p>20 inpatient type treatment.</p> <p>21 Q. But for the vast majority of inmates that are housed</p> <p>22 in the penal system that suffer from mental illnesses that</p> <p>23 don't require that type of chronic care, you certainly have the</p> <p>24 abilities to treat them and to house them and -- and put them</p> <p>25 in a position that makes them best able to control through</p>	<p style="text-align: right;">92</p> <p>1 don't -- I may be asking you something you have no answer to,</p> <p>2 but do you have any knowledge as to the amount of offenders in</p> <p>3 the penal system, percentage-wise, that are actually suffering</p> <p>4 from diagnosed mental illness?</p> <p>5 A. No, sir, I don't -- I don't have those -- I don't</p> <p>6 have that type of information.</p> <p>7 Q. Okay. That's all I have, Warden. Thank you.</p> <p>8 <u>FURTHER DIRECT EXAMINATION</u></p> <p>9 BY MR. HEALY:</p> <p>10 Q. There would be a lot of them, though, wouldn't</p> <p>11 there, Warden?</p> <p>12 A. I would assume so, yes, sir.</p> <p>13 Q. And you still have that many acts of violence, don't</p> <p>14 you?</p> <p>15 A. Yes, sir, we still have acts of violence.</p> <p>16 Q. And just briefly, just so the jury is understanding,</p> <p>17 Mr. Johnson asked about studies done on the life without parole</p> <p>18 on capital murder cases. When did that law go into effect?</p> <p>19 A. 2006, I believe -- 2005, 2006. I think we went into</p> <p>20 effect one year, and it was almost a year before we began</p> <p>21 seeing anyone come into our system with the life without</p> <p>22 parole. So it hasn't been very many years.</p> <p>23 Q. So fairly recent?</p> <p>24 A. Yes, sir.</p> <p>25 MR. HEALY: Okay. That's all I have, Your</p>

1 Honor.
 2 MR. JOHNSON: Nothing further.
 3 THE COURT: Thank you very much.
 4 THE WITNESS: Thank you.
 5 THE COURT: She's free to go?
 6 MR. HEALY: Subject to recall, Your Honor.
 7 THE COURT: All right. Subject to recall.
 8 MR. HEALY: Thank you.
 9 THE COURT: All right. Ladies and gentlemen,
 10 we're going to go to lunch, 12:40. You want to say -- we're
 11 not going to get started back until 2 o'clock -- I'm sorry.
 12 We've got some other things that we got to grind out. Give
 13 me -- give me five minutes so I can figure out the rest of
 14 today. So just go on back to the jury room. Let me see the
 15 lawyers up here.
 16 THE BAILIFF: All rise.
 17 (Jury excused from courtroom.)
 18 (Discussion off the record.)
 19 THE COURT: Okay. So we're ready for the jury.
 20 THE BAILIFF: All rise.
 21 (Jury returned to courtroom.)
 22 THE COURT: Okay. State, please call your next
 23 witness.
 24 MR. BEACH: Before, Your Honor, the State would
 25 offer into evidence State's Exhibit 159.

1 (State's Exhibit 159 offered.)
 2 MR. JOHNSON: Judge, we're going to have no
 3 objection to those documents in their entirety.
 4 THE COURT: They're admitted.
 5 (State's Exhibit 159 admitted.)
 6 MR. BEACH: The State would call Ruth Lyons.
 7 (Witness brought forward and sworn.)
 8 THE COURT: Please have a seat.
 9 RUTH LYONS,
 10 was called as a witness by the State, and after having been
 11 first duly sworn, testified as follows:
 12 DIRECT EXAMINATION
 13 BY MR. BEACH:
 14 Q. Tell us your name, please.
 15 A. Ruth Lyons.
 16 Q. And, Ruth, how old are you?
 17 A. I'm 50.
 18 Q. That ain't old. Where were you born?
 19 A. Peoria, Illinois.
 20 Q. And you and Margarita grew up in Peoria; is that
 21 correct?
 22 A. That is.
 23 Q. And is it fair to say that you and Margarita had a
 24 lengthy exclusive romantic relationship in Margarita's younger
 25 years?

1 A. We did.
 2 Q. And how old was Lovetta when you and Margarita came
 3 together?
 4 A. Just a little bit over three years old.
 5 Q. And what do you -- I mean, what did you consider
 6 Lovetta as?
 7 A. That was my daughter.
 8 Q. And you basically raised her from age three all the
 9 way up until September 21st, 2009?
 10 A. That is correct.
 11 Q. Now, when did you come down to the Dallas area?
 12 A. It was October of '95.
 13 Q. And are you employed right now?
 14 A. I am.
 15 Q. Where do you work?
 16 A. Tuesday Morning Corporate Headquarters here in
 17 Dallas.
 18 Q. And I'm going to direct your attention back to late
 19 2007, early 2008, and ask if you had come to live with Lovetta
 20 and her children and a man that you knew as Gary Green out at
 21 3844 Morning Springs Trail?
 22 A. That is correct.
 23 Q. Had they just moved into the house on Morning
 24 Springs Trail when you came to live with them?
 25 A. Yes.

1 Q. And do you see Gary Green here in court today?
 2 A. Yes.
 3 Q. Is he the man at the end of the counsel table?
 4 A. He is.
 5 Q. And about how long did you live there in the house
 6 with the five of them?
 7 A. About six, maybe seven months.
 8 Q. And what was the reason why you were there versus
 9 out on your own at that point in time?
 10 A. Well, I was getting ready to buy a house, and in the
 11 transition from my apartment, the house wasn't quite ready yet.
 12 So Lovetta had -- Lovetta had called me -- I call her Vetta --
 13 had called me and said, well, why don't you come stay here
 14 versus me having to go get another apartment or end up out in
 15 Irving with a friend because she could use the help. So I
 16 transitioned over and stayed with her.
 17 Q. And even before you came to live with them for those
 18 five or six months, had you maintained a relationship with
 19 Vetta?
 20 A. Yes.
 21 Q. Would there be times when Vetta would bring JT and
 22 Jerrett and little Jazzmen over to you?
 23 A. Yes.
 24 Q. And you had an ongoing relationship with her three
 25 children?

1 A. Yes.

2 Q. The five or six months that you lived there on

3 Morning Springs Trail, did Gary Green work gainfully while you

4 were there?

5 A. Not once.

6 Q. Just in general, what was Gary Green's daily routine

7 in terms of what would he do around the house?

8 A. Played video games, watched soaps.

9 Q. Didn't work?

10 A. No.

11 Q. I'm going to direct your attention to early 2008,

12 after New Years and ask you if JT came to you one morning and

13 told you -- told you something?

14 A. Well, it was Jerrett.

15 Q. It was Jerrett?

16 A. It was Jerrett. Friday nights, I played poker.

17 MR. JOHNSON: Objection to responsive, Judge.

18 Q. (BY MR. BEACH) We'll just go question and answer.

19 Did Jerrett come and tell you something early

20 one Saturday morning?

21 A. Yes.

22 Q. Without going into what Jerrett told you, who was

23 the next person that you went to see?

24 A. Well, Jerrett sent JT in.

25 Q. Okay. JT came and talked to you?

98

1 A. Uh-huh.

2 Q. And let me just stop right there. Did you get JT

3 and Jerrett and Jazzmen and Lovetta out of the house?

4 A. Yes.

5 Q. And was that for a specific reason?

6 A. Yes, it was.

7 Q. What was that?

8 MR. JOHNSON: Object to hearsay, Judge.

9 MR. BEACH: No, why she got them out of the

10 house.

11 Q. (BY MR. BEACH) Who did you want to talk to by

12 yourself?

13 A. I needed to talk to Gary.

14 MR. JOHNSON: I object to hearsay, and ask to

15 approach the bench.

16 THE COURT: Okay. Come on up.

17 (Sidebar Conference.)

18 THE COURT: Ladies and gentlemen, we are

19 required under the law to -- to have a hearing outside of your

20 presence regarding this, and I appreciate it. Just -- book

21 says I have to do it.

22 THE BAILIFF: All rise.

23 (Jury excused from courtroom.)

24 MR. BEACH: Proceed?

25 THE COURT: Jury is not now present. We're

1 having a hearing. I'm not sure quite on what, but --

2 MR. JOHNSON: Well, Judge, just so the record is

3 clear, I was made aware of something under 404(b) notice in

4 regards to a specific act of -- the Defendant having committed

5 an assaultive conduct and the way -- and I'm -- just out of an

6 abundance of caution, want to make sure that because of the way

7 he's setting this predicate, it doesn't appear that she's a

8 witness to it, and I want to make sure that before she goes

9 into something that would be objectionable under either a 404

10 objection or under a hearsay type of objection, I want -- I

11 need to know the parameters of what it's being -- I didn't have

12 any objection if she was going to say I saw something happen,

13 because I had notice of that. But this is -- it's just the way

14 it's being presented.

15 THE COURT: Andy, do you want to make a quick

16 offer of proof? Would that be the fastest way to do this?

17 MR. BEACH: The boys saw Gary choking their mom

18 one night. The next morning Jerrett -- JT went and told Ruthie

19 about it, and Ruthie goes and confronts Gary. What's this

20 about you putting your hands on Lovetta? Gary admits to it,

21 starts crying, and just her conversation with him after that.

22 MR. JOHNSON: And we're going to object to that,

23 Judge, because by her -- him using the statement, and what's

24 this about you putting your hands on her or choking her, that's

25 using the hearsay statements by the -- by the two boys. That's

100

1 introducing -- introducing hearsay.

2 THE COURT: Well, it's -- can you elicit your

3 testimony without back dooring what the boys said to her?

4 MR. BEACH: Yeah. Did you -- what's this -- I

5 mean, just even the question -- it would be like saying, she

6 has a good faith basis to ask the question.

7 THE COURT: I understand that.

8 MR. BEACH: She asked him a question.

9 THE COURT: If you just said -- and, Paul, what

10 do you think about this? In an abundance of caution, him just

11 saying, on such and such a date, did you have a conversation

12 with Gary Green? Yes. What did you ask him? Is that --

13 MR. JOHNSON: Well, Judge, the problem is -- I

14 mean, it's certainly -- the question itself is -- implies the

15 truth of the matter of the hearsay statements made by the

16 children.

17 MR. BEACH: And he confirms it -- Gary confirms

18 it. It is the evidence we're trying to --

19 MR. JOHNSON: Well, again, I haven't heard --

20 I'd have to -- Judge, instead of just an offer of proof, I

21 think I need to hear the testimony and see if whether -- what

22 type of statement he made and if it was an actual verbal --

23 verbal affirmation or not or --

24 THE COURT: Okay. That's -- that's fair. Go

25 ahead, Andy, ask your question.

1 Ma'am, you're free to -- you're free to answer.

2 We're trying to get it right.

3 THE WITNESS: Okay.

4 THE COURT: Okay?

5 THE WITNESS: Okay.

6 (Outside the presence of the jury, defendant
present.)

7

8 VOIR DIRE EXAMINATION

9 BY MR. BEACH:

10 Q. All right. Ruthie, what specifically did JT tell
11 you before you got everybody out of the house and confronted
12 Gary Green?

13 A. Jerrett --

14 COURT REPORTER: I'm sorry, one more time.
15 Before you got everybody -- I didn't hear you. I'm sorry.

16 Q. (BY MR. BEACH) Who came -- let me just back up.
17 Who came and told you that morning about Gary doing something?

18 A. Jerrett woke me up and told me.

19 Q. Okay. Jerrett told you?

20 A. Yes.

21 Q. JT did not tell you?

22 A. JT did not tell me. JT confirmed it.

23 Q. I got you. What did Jerrett tell you?

24 A. Jerrett said that Gary had choked Vetta and he had
25 his hands around Vetta's throat choking her.

1 Q. And JT confirmed that?

2 A. He did.

3 Q. Okay. You get everybody out of the house; is that
4 right?

5 A. I did.

6 Q. And -- because you wanted to talk to Gary alone?

7 A. That's correct.

8 Q. So where did you confront Gary Green about this
9 allegation?

10 A. In his -- in that bedroom.

11 Q. Just walk us through what happened.

12 A. I told him -- my exact words to him was, Player, I
13 need to talk to you. He said, okay. We went back into Vetta's
14 bedroom. He pulled up a chair at the end of the bed, and I sat
15 down on Vetta's side of the bed. And I asked him, did he put
16 -- my exact words were: Did you put your hands on Vetta? And
17 he dropped his head. And I told him right then and there, as
18 long as he live, he better not never put his hands on nobody
19 else in that house or I'd kill him.

20 Q. And did he ever -- after he dropped his head, did he
21 ever deny doing it, say he didn't do it, anything like that?

22 A. He said that he did it. He said that he did it and
23 that he was sorry. And he began to cry. And at that point in
24 time I talked to him and I told him, I said, you're the man in
25 this house. You're supposed to be setting an example for these

1 two boys. Is this the kind of stuff you want them doing to

2 their wives and their girlfriend, and he told me --

3 MR. BEACH: That's all I'd offer through her,

4 Judge.

5 VOIR DIRE EXAMINATION

6 BY MR. JOHNSON:

7 Q. Ms. Lyons, is that the exact words that you recall?

8 A. Those are the exact words.

9 Q. Okay. There was no other words said by you or said
10 by him to your recollection?

11 A. No.

12 Q. And you're positive as to the phrasing that you just
13 gave us is the phrasing that you recall?

14 A. That's as -- that's as close as I can remember, yes.

15 Q. Okay.

16 MR. JOHNSON: Judge, that's all -- that's all
17 the questions I have of her -- well, let me ask this.

18 Q. (BY MR. JOHNSON) You said he dropped his head, and
19 that's when you told him if you ever put your hands on her
20 again, you'll kill him?

21 A. That's what I told him.

22 Q. Then when is it that he said he did it?

23 A. That's what he said. When -- we knew -- I knew he
24 had done it. He said that he had done it.

25 Q. When did he say that?

1 A. He said that in the midst of the conversation.

2 Q. Okay.

3 MR. JOHNSON: Judge, that's all I have of her at
4 this time. I'd like the witness to be excused while we argue
5 what legal points, if the Court would allow.

6 THE COURT: Ma'am, would you mind stepping down,
7 please?

8 THE WITNESS: I will.

9 (Witness excused from courtroom.)

10 MR. JOHNSON: Judge, our specific objection is

11 going to be that, number one, that this testimony does not
12 match the 404(b) notice that we were given. And she claims
13 that in response or that -- or that she asked some question
14 about putting your hands on her. That does not imply that the
15 Defendant ever assented either orally or by non-verbal conduct
16 that he had choked her. And so this does not -- this proof
17 doesn't match what we were given by way of 404(b) and it allows
18 the jury to speculate as to what putting your hands on her
19 means. And that's just completely improper to allow the jury
20 to start drawing some kind of inferences from a statement like
21 that.

22 THE COURT: What's the State's response?

23 MR. BEACH: Ruthie is not going to say -- when I
24 said did you put your hands on her, did I mean, did you put
25 your hands around her waist or her knee or her, you know,

1 little arm. I mean, that's what it means to Ruthie. When you
 2 put your hands on someone, a man puts their hands on you, that
 3 means you put your hands on her neck.
 4 MR. JOHNSON: Judge, that's why I specifically
 5 asked her the exact phraseology, and she did not say it. And
 6 what she assumed it to mean, that's not sufficient 404 notice.
 7 MR. BEACH: That's cross. That's not notice.
 8 THE COURT: Well --
 9 MR. BEACH: The boy is going to come in and say,
 10 I saw him put his hands on her neck and I went and told my, you
 11 know, granny, Ruthie.
 12 THE COURT: I know.
 13 MR. BEACH: Why are we fighting this battle?
 14 THE COURT: I see what you're saying. The
 15 404(b) notice was, for instance, that the lady was getting
 16 ready to fight -- I mean, just an absurd example. The lady is
 17 getting ready to fight and the testimony is she took her shoes
 18 off. Well, we all know what that means, right? If she takes
 19 her shoes off, takes her earrings off, she's fixing to get in a
 20 fight.
 21 MR. JOHNSON: I'm not sure if I --
 22 THE COURT: I don't think that's a big leap for
 23 them. I'm just saying, it's -- it's somewhat of a term of art,
 24 but I don't think that it's a cause for a jury to reach some
 25 ridiculous conclusion.

1 MR. JOHNSON: Judge, it's -- this is not a
 2 question of the jury drawing a ridiculous conclusion because
 3 the jury -- the jury is not supposed to -- in any situation
 4 when you're involved in the death of a human being, they're not
 5 supposed to have any opportunity to speculate or draw
 6 conclusions at all. We were given a 404(b) notice to a
 7 particular act of violence against a particular individual in a
 8 particular time frame. This proof does not match up to the
 9 404(b) notice we were given and it does allow them to
 10 speculate. And having the jury speculate to an act of violence
 11 against the complainant in the case, it would be improper under
 12 any circumstance, whether it be a commonly understood term or
 13 phrase of art or whether it would be just to this particular
 14 Ruthie Lyons, and I -- Judge, I don't -- I don't agree that
 15 there's -- that there is anything about this testimony that
 16 matches the notice we were given.
 17 THE COURT: May I see the notice?
 18 (Document handed to Court.)
 19 THE COURT: Is this something that -- that you
 20 say that the boys are going to testify --
 21 MR. BEACH: Yes, sir.
 22 THE COURT: -- about?
 23 MR. BEACH: Yes, sir. And I wasn't going to ask
 24 them about it, but now -- I mean, I didn't think it was going
 25 to be this big an issue. So, yeah, they will confirm that they

1 saw it and went and told Ruthie.
 2 And, Judge, it's in his letter, too, about
 3 Ruthie trying -- or saying that she was going to shoot me.
 4 THE COURT: Okay. Here's my ruling. I'm going
 5 to allow the line of questioning over the Defense's objection.
 6 I understand the objection. I find that the notice is
 7 sufficient, and that they can proceed with this line of
 8 questioning. Is there a -- is there an additional -- is there
 9 a bill you want to make or anything additional you think needs
 10 to be put on the record?
 11 MR. JOHNSON: Judge, just to make -- just to
 12 make sure that -- I just showed the Court my file stamped copy
 13 of the supplemental notice of extraneous, and it specifically
 14 said that in late 2007 and/or early 2008, Gary Green choked
 15 Lovetta Armstead at their house at 3844 Morning Springs Trail
 16 in Dallas County, Texas. And we're going to ask that the Court
 17 require strict proof of that if they're going to allow this
 18 line of testimony and that means that -- I mean, we're
 19 certainly objecting to the ruling. We think it's improper,
 20 but -- we think it's going outside the notice that we were
 21 given.
 22 THE COURT: Well, and your specific objection is
 23 that when she says that JD said --
 24 MS. BENNETT: JT.
 25 THE COURT: -- JT said to her that -- all right.

1 I'm going to allow it. I -- I think the notice is sufficient.
 2 It's not perfect, but I think it's sufficient.
 3 MR. JOHNSON: In the notable words of Paul
 4 Brauchle, note our exception.
 5 THE COURT: No comment.
 6 MR. BEACH: Who signed -- who signed the
 7 notice -- supplemental notice? Me. So that's why it's not
 8 perfect, okay? I didn't have one of the appellate --
 9 MR. JOHNSON: Judge, it's my understanding that
 10 the Court is going to -- is allowing this testimony based on
 11 the representation that it's going to be proven up through
 12 other witnesses, or you're just allowing the testimony through
 13 this witness and that's going to satisfy the -- that the Court
 14 feels that the notice was appropriate?
 15 THE COURT: I -- it's twofold. One, it's -- you
 16 will have -- you have the opportunity to question other
 17 witnesses regarding this offense, or alleged offense. And --
 18 so I'm not going to require them, but you certainly will have
 19 witnesses available to be able to question those witnesses
 20 regarding this alleged offense.
 21 MR. JOHNSON: Okay.
 22 THE COURT: All right. We're ready.
 23 (Witness returns to courtroom.)
 24 THE BAILIFF: All rise.
 25 (Jury returned to courtroom.)

1 THE COURT: Thank you all. Please be seated.

2 All right. Please continue.

3 (In the presence of the jury, defendant
4 present.)

5 CONTINUED DIRECT EXAMINATION

6 BY MR. BEACH:

7 Q. State your name, please.

8 A. Ruth Lyons.

9 Q. And you are the same Ruth Lyons that was testifying
10 prior to the break; is that correct?

11 A. I am.

12 Q. Now, we're to the point, Ruth, that you get Lovetta
13 and the children out of the house; is that correct?

14 A. It is.

15 Q. And did you want to talk to Gary Green just
16 face-to-face?

17 A. I did.

18 Q. Did you talk to Gary Green face-to-face?

19 A. I did.

20 Q. And where did this happen there in the house?

21 A. In Lovetta's bedroom.

22 Q. Same bedroom where she was murdered about a year and
23 a half later, in the same area where Jazzmen was murdered; is
24 that correct?

25 A. That is correct.

1 Q. And what's the first thing that you said to Gary?

2 A. The very first thing was I had told him: Player, I
3 need to talk to you.

4 MR. JOHNSON: Judge, if I might -- just so the
5 record is clear, that we do object to this testimony and I
6 understand the Court's ruled and we just want to make sure that
7 the record shows that --

8 THE COURT: Yeah, the objection is -- your
9 objection is -- is noted and overruled.

10 Q. (BY MR. HEALY) Go ahead, ma'am.

11 A. I told him: Player, I need to talk to you.

12 Q. Player?

13 A. Player.

14 Q. Okay. And after you said that, what's the next
15 thing that was said?

16 A. He said, okay. And we began to walk back to the
17 bedroom. At that time he grabbed a chair and opened it up and
18 sat it down by the foot of the bed.

19 Q. Okay.

20 A. And I sat down on the side of the bed that Vetta
21 sleeps on -- slept on, and he sat down.

22 Q. What did you say to him?

23 A. I asked him -- I said, did you put your hands on
24 Vetta?

25 Q. Now, does that have a common understanding from

1 Where you come from? I mean, what did you mean by that? Did

2 he put her hands on her leg or arm or what?

3 A. Well, based on what I had -- the information that I
4 had --

5 THE COURT: No, ma'am, you need to answer --

6 A. My question was --

7 THE COURT: I understand. He asked you a
8 specific question, and you can only answer the question. Will
9 you please repeat the question and just answer the question as
10 he asks it.

11 Q. (BY MR. BEACH) Well, what were you meaning when you
12 asked Gary, is it true you put your hands on Vetta?

13 A. Did he put his hands on Vetta.

14 Q. And what did he say at that point in time?

15 A. He said yes.

16 Q. Okay. And then what happened?

17 A. And I told him then -- I said, if he ever put his
18 hands on anybody else in that house I'd kill him.

19 Q. Now, you were here last week during the trial of the
20 first part; is that correct?

21 A. It is, yes.

22 Q. And let me ask you this, Ruth. When you said that
23 to Gary, you weren't playing around, were you?

24 A. Not at all.

25 Q. Did he know that you weren't playing around?

1 A. He knew it.

2 Q. And you heard the letter read last week that he
3 wrote to Lovetta there the last day of her life?

4 A. I did.

5 Q. And there was a reference in there about, I had to
6 go through all this bullshit with Ruth over that shit, she
7 saying she wanted to shoot me over me trying to stop you from
8 leaving them here alone. I mean, do you remember hearing that
9 in the --

10 A. I do.

11 Q. Was that why you were threatening bodily harm to him
12 because something about him trying to keep her in the house?

13 A. Well, yes.

14 Q. And him putting his hands on her?

15 A. That is correct.

16 Q. That was the main thing that you were concerned
17 with; is that correct?

18 A. It is.

19 Q. Now, after he admitted to it, what happened next?

20 A. After I told him that I'd kill him, he began to cry.

21 Q. And was he looking at you? Did he have his head
22 down? What was he doing?

23 A. He said that he was sorry, he was just sorry. I
24 went on to tell him, you know, Gary, you are the man in this
25 house. You the man in the house. And JT and Jerrett have to

1 look up to you. They look up to you. This is not -- you know,
 2 this is not what men do. They -- now they thinking that maybe
 3 this is what they need to be doing to they wives or girlfriends
 4 or -- you know, this is not the way we do things around here.
 5 Q. How did he react to that?
 6 A. Still sobbing, said that he was really sorry.
 7 MR. BEACH: That's all I have, Judge.
 8 THE COURT: Cross?
 9 MR. JOHNSON: I have no questions, ma'am. Thank
 10 you.
 11 THE COURT: Thank you very much. Ma'am, you may
 12 step down.
 13 MR. BEACH: You may step down.
 14 (Witness excused from courtroom.)
 15 MR. BEACH: We call Ray Montgomery, Judge.
 16 THE COURT: Is she subject to recall?
 17 MR. BEACH: No.
 18 THE COURT: Can she retake her seat?
 19 MR. BEACH: You're excused.
 20 He's already been sworn.
 21 THE COURT: Oh, you testified earlier. Please
 22 have a seat.
 23 Sir, you will recall being previously sworn.
 24 You are still under oath.
 25 (No omissions.)

1 RAY MONTGOMERY,
 2 was called as a witness by the State, and after having been
 3 first duly sworn, testified as follows:
 4 DIRECT EXAMINATION
 5 BY MR. BEACH:
 6 Q. Tell us your name again, please.
 7 A. Ray Montgomery, Jr.
 8 Q. You are the same Ray Montgomery, Jr., father of
 9 Jazzmen Montgomery, that testified at the first part of this
 10 trial?
 11 A. Yes, sir.
 12 Q. You understand that you're still under oath?
 13 A. Yes, sir.
 14 Q. You and I talked along with some of the other
 15 relatives of Lovetta and Jazzmen that you have the opportunity
 16 now under the law to express to the jury just how the murder of
 17 your daughter has affected your life since September 21st of
 18 2009. You understand that?
 19 A. Yes, sir.
 20 Q. You have that opportunity. We've talked about what
 21 you -- what you can't -- you can't go into anything other than
 22 just how Jazzmen's death -- you know, the hole it's left in
 23 your life and how you've -- how you've dealt with it. Do you
 24 understand that?
 25 A. Yes, sir.

1 Q. Okay. With that -- that in mind, can you tell the
 2 folks of the jury what impact your daughter's death has had on
 3 your life? How has it affected you?
 4 A. It has affected me a great deal because I always
 5 tried to be a great father for her. I always tried to be a
 6 part of her life. I always tried to be a great role model for
 7 her, and I never expected this to happen. And when it
 8 happened, it just really changed my life and the direction my
 9 life was going in. And it's still hard, you know, to know
 10 that, you know, my daughter is not in my life anymore and she
 11 is gone. And the things that normal people do with their
 12 children, it hurts to see them do that because I can't do it
 13 with her anymore because I don't have her.
 14 Q. Anything else you want to say in that regard, sir?
 15 A. It's been stressful. It's been stressful dealing
 16 with -- just dealing with this. Like I say, I didn't -- I
 17 didn't -- couldn't imagine this ever happening to me. And then
 18 when it did, it's -- it's really -- it's different. It's very
 19 different. Working with kids every day -- I'm an educator, and
 20 I work with kids every day. And it's hard to look at those
 21 kids and see them doing things and getting awards and things
 22 and in the back of my mind I'm like -- I won't be able to go to
 23 my daughter's graduations and things like this because she's
 24 not here. It was all taken from me, and it's hard -- it's hard
 25 because the kids at school want me to be happy for them, and

1 I'm trying to be happy. But then in the back of my mind, I'm
 2 like, I'm not -- I don't want to be like jealous of them or
 3 anything, but I don't have a daughter that I could -- my
 4 daughter that I could go and -- and visit her at school and go
 5 on field trips and things like that with. And it's very hard.
 6 Q. Thank you, sir.
 7 A. Yes, sir.
 8 MR. BEACH: Pass the witness.
 9 MR. JOHNSON: I don't have any questions, Mr.
 10 Montgomery.
 11 THE COURT: Thank you, sir.
 12 Sir, you may retake your seat.
 13 (Witness brought forward, previously sworn.)
 14 MR. BEACH: Is that a real tie? Man, I never
 15 wore one of those when I was your age.
 16 THE COURT: Come on up and have a seat. You
 17 will recall that you previously testified in this matter and
 18 you are still -- promise to tell the truth, right?
 19 THE WITNESS: Yes.
 20 THE COURT: Your witness.
 21 JERRETT ARMSTEAD,
 22 was called as a witness by the State, and after having been
 23 first duly sworn, testified as follows:
 24 DIRECT EXAMINATION
 25 BY MR. BEACH:

1 Q. Tell us your name one more time, okay?

2 A. Jerrett Armstead.

3 Q. Jerrett, we've talked about this -- this time, and

4 this is your opportunity to tell these people how your life has

5 been affected by what happened back at your house on

6 September 21st, 2009; is that correct?

7 A. Yes.

8 Q. Okay. And you know really what you can say and what

9 you can't say, so just listen real close to my question. We've

10 already heard about you having to see your mom there on her

11 bedroom floor that day, and you went your mom's funeral. How

12 has your mom being gone -- being gone the rest of your life,

13 how has that affected you since -- since that night?

14 A. I have been having weird dreams lately.

15 Q. Okay.

16 A. And that night, now I hear noises at night.

17 Q. Have you been going to counseling out at the

18 Children's Advocacy Center?

19 A. Yes.

20 Q. And you've been with Dr. Ashley Lynn really since

21 about a week or so after this happened; is that right?

22 A. Yes.

23 Q. And you've had a lot of -- a lot of anger since the

24 murder; is that correct?

25 A. Yes.

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1 Q. And just a lot of questions as to why Gary would do

2 something like this?

3 A. Yes.

4 Q. Have you had nightmares?

5 A. Yes. I had one last night.

6 Q. You had one last night. And, Jerrett, is it true

7 that even -- there's been times when you kind of have blamed

8 yourself for all of this; is that right?

9 A. Yes.

10 Q. Like you could have done something to stop it?

11 A. Yes.

12 Q. But you understand this isn't your fault, you

13 understand that, don't you?

14 A. Yes.

15 Q. Now, I know every brother has kind of an interesting

16 relationship with their baby sister, but can you just tell us

17 now that Jazzmen is out of your life, how has that made you

18 feel?

19 A. Sad because now I ain't got nobody that when I try

20 to hug them, they say -- when I try to give them kisses, they

21 say eeeh. And now that she can't -- now that she can't come to

22 my room, so she can be with me.

23 Q. You miss your little sister?

24 A. Yes.

25 Q. That's all I have. Thanks for coming down, Jerrett.

1 A. You're welcome.

2 MR. JOHNSON: I have no questions. Thank you.

3 THE COURT: Thank you very much for coming in.

4 You are free to just go with the investigator.

5 (Witness brought forward, previously sworn.)

6 THE COURT: Sir, you will recall that you are

7 still under oath and promise to tell the truth. You understand

8 that?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Please continue.

11 MR. HARRIS: Thank you, Your Honor.

12 JEROME ARMSTEAD,

13 was called as a witness by the State, and after having been

14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HARRIS:

17 Q. Go ahead and state your name again for the record.

18 A. My name is Jerome Armstead, but my friends and

19 family call me JT.

20 Q. Okay. And, JT, you're the same young man that

21 testified for this jury earlier; is that correct?

22 A. Yes, sir.

23 Q. Earlier during this trial?

24 A. Yes, sir.

25 Q. During this portion of the trial, main thing I want

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1 to give you an opportunity is basically to let the ladies and

2 gentlemen of the jury -- tell them how the loss of your mother

3 and your sister has affected you.

4 A. Yes, sir.

5 Q. You want to tell them?

6 A. Having my mom and my sister gone, a lot of things

7 are different. I can't wake up and say good morning to my mom

8 anymore. I can't hug my little sister every time she goes to

9 school anymore. And sometimes I wake up too depressed to get

10 up. And then when I go to school, I have to bottle up my

11 emotions. That way no one can bother me anymore. And

12 sometimes I just break out crying in the middle of class, and I

13 really don't talk to anybody or tell anybody what's going on,

14 because all it's going to do is make it worse. And seeing my

15 granny and the rest of my family cry over this, it hurts me

16 even more. And if I could cut my own throat to bring my mom

17 and sister back, I would.

18 Q. As far as this whole incident, you're still in

19 counseling?

20 A. Yes, sir.

21 Q. Doing the best you can?

22 A. Yes, sir.

23 Q. And you try to, I guess, put on a pretty good act as

24 far as trying to be strong for your little brother?

25 A. Yes.

1 Q. And the rest of your family, but sometimes it gets
 2 hard, doesn't it?
 3 A. Yes, sir.
 4 Q. Okay. And the truth of the matter is you still have
 5 nightmares about that night, don't you?
 6 A. Yes, sir.
 7 Q. And to be honest with the ladies and gentlemen of
 8 this jury, I mean, you're still angry now, aren't you?
 9 A. Yes, sir.
 10 Q. Okay. And I think in the counseling you've even
 11 shared with them that you've had nightmares about this
 12 Defendant getting out?
 13 A. Yes, sir.
 14 Q. Is that true?
 15 A. Yes, sir.
 16 Q. And if you're really honest with them, you're still
 17 worried about him getting out some day, aren't you?
 18 A. Yes, sir.
 19 Q. Okay. But you're doing the best you can in
 20 counseling?
 21 A. Yes, sir.
 22 Q. And just so the members of the jury will know, at
 23 the time your mother and sister were brutally murdered, you and
 24 JT, you shared a room, didn't you?
 25 A. Yes, sir.

1 Q. Y'all still able to share a room right now?
 2 A. No, sir.
 3 Q. Okay. Does he stay with your grandmother?
 4 A. Yes, he stays with my grandmother, and I stay with
 5 my dad.
 6 Q. Okay. You miss him?
 7 A. Yes, sir.
 8 Q. Miss your little brother?
 9 A. Yes.
 10 Q. I know sometimes it's hard having a little brother
 11 and sharing the same room.
 12 A. Yes, sir.
 13 Q. And as far as being the oldest, the night all this
 14 happened, you still kind of, you know, feel some responsibility
 15 for it?
 16 A. Yes, sir.
 17 Q. But in your counseling, you understand it's not --
 18 not your fault?
 19 A. Yes, sir.
 20 Q. Okay. Anything else you want to share with this
 21 jury or this good Judge?
 22 A. No, sir.
 23 MR. HARRIS: That's all I have, Judge.
 24 THE COURT: Any questions?
 25 MR. JOHNSON: No, sir.

1 THE COURT: Thank you. You're free to go.
 2 MR. BEACH: Call Margarita Brooks.
 3 THE COURT: Ma'am, you will recall you're still
 4 under oath.
 5 THE WITNESS: Yes, sir.
 6 THE COURT: Please continue.
 7 MARGARITA BROOKS,
 8 was called as a witness by the State, and after having been
 9 first duly sworn, testified as follows:
 10 DIRECT EXAMINATION
 11 BY MR. BEACH:
 12 Q. Take a deep breath, and let's get through this,
 13 okay? Will you state your name?
 14 A. Margarita Brooks.
 15 Q. And really, seeing your two grandsons up there,
 16 that's just kind of a microcosm of what these last 14 months
 17 have been for you; is that right?
 18 A. Yes.
 19 Q. And the minute that you run that bathtub at your
 20 house and your husband is saying they're dead, they're dead,
 21 and you're rushing over to your daughter's house, just tell us,
 22 Ms. Brooks, what your life has been like since the murder of
 23 your daughter and your granddaughter.
 24 A. It's been very difficult. It's been difficult for
 25 myself, as well as seeing the boys go through the suffering

1 that they have went through. It's been difficult just making
 2 sure that we all get to our appointments with therapists and
 3 psychiatrists. And it's been difficult because we have had to
 4 have so much help to just make it through the day. It's been a
 5 lot of pressure on our family. Jerrett and I have had to have
 6 medication which was terrible, dealing with the things that the
 7 insurance companies would cover and wouldn't cover. And then
 8 the body, just rejecting certain medicines and trying different
 9 ones and -- it's just been difficult. No one could imagine
 10 what this has done to our family, and it's so complicated. I
 11 really can't even sit here and explain.
 12 Q. Has your family -- has your family stayed together
 13 and kind of just come together over this to where -- this isn't
 14 going to defeat y'all?
 15 A. No, it's not going to defeat us. It's brought some
 16 strife and challenges, but we'll make it through. Our family
 17 bond is close.
 18 Q. Thank you, ma'am.
 19 MR. BEACH: That's all I have, Judge.
 20 MR. JOHNSON: No questions.
 21 THE COURT: Thank you, ma'am. You may retake
 22 your seat.
 23 MR. BEACH: May we approach?
 24 THE COURT: You may.
 25 (Sidebar conference.)

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1 THE COURT: All right. Ladies and gentlemen, as

2 promised, we are closing up for the day. You'll come back here

3 at -- let's shoot for 9 o'clock tomorrow morning.

4 THE BAILIFF: All rise.

5 (Jury excused from courtroom.)

6 THE COURT: All right. What hearings do we need

7 to have right now?

8 MR. BEACH: We just need to go over these

9 counseling reports and see what we can agree on in terms of

10 what --

11 THE COURT: So we're not going to have a 705

12 hearing on any of the experts today?

13 MR. BEACH: We can do that or we can do that

14 first thing in the morning, whatever you want to do.

15 THE COURT: I'd rather do it now.

16 MR. BEACH: That's fine.

17 THE COURT: If we have people available.

18 MR. JOHNSON: That's fine.

19 THE COURT: Okay.

20 MR. BEACH: We need about a ten-minute break in

21 between. You want to do it right now -- right now?

22 THE COURT: No, let's do this. Let's do

23 counseling records first. Then you can take a break and

24 then -- is that -- I mean --

25 MR. BEACH: Sure.

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1 MR. JOHNSON: Counseling records first?

2 THE COURT: Counseling records first.

3 Can you all set the stage real quick just for

4 the record as far as the -- what the counseling records are,

5 who made them, when they were made, and approximately how many

6 pages?

7 MR. JOHNSON: Judge, there's approximately --

8 I'd say 80 pages, maybe 100.

9 MR. BEACH: Total for both of them?

10 MR. JOHNSON: Yeah. Probably a hundred pages

11 total for both -- kind of both of the kids made by --

12 What was the name of the doctor?

13 MR. BEACH: Lind, L-i-n-d.

14 MR. JOHNSON: And they're going to go through

15 them real quick and see if they can -- if we can agree on what

16 to offer.

17 THE COURT: Oh, okay. So you think there is

18 some possibility of an agreement from the Defense because that

19 is not what I understood the facts to be.

20 MR. JOHNSON: Well, Judge, again, if the Court's

21 going to -- if the Court's of the opinion that you're going to

22 allow either one or other -- one or the other or both, then I'm

23 certainly in a much more agreeable position.

24 THE COURT: Well, I understand. The Court's

25 concern is that counseling records -- the records themselves

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1 can't be cross examined.

2 MR. JOHNSON: Correct.

3 THE COURT: And the counseling records may

4 contain items that are -- satisfy one prong of the

5 admissibility, but not another. And that a jury starts reading

6 these, and one juror may have an interpretation based on their

7 own personal experience of what something means in a record, a

8 counseling record, that differs from another juror. And if we

9 don't have the counselor here to testify --

10 MR. BEACH: We do.

11 THE COURT: -- what things mean, I think we just

12 run the risk of someone getting a misunderstanding of what the

13 records are.

14 All right. We're off the record.

15 (Discussion off the record.)

16 THE COURT: You swear to tell the truth, nothing

17 but the truth?

18 THE WITNESS: Yes.

19 (Witness brought forward and sworn.)

20 THE COURT: Please proceed.

21 (Outside the presence of the jury, defendant

22 present.)

23 DR. GILBERT MARTINEZ,

24 was called as a witness by the Defendant, and after having been

25 first duly sworn, testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q. State your name, please.

4 A. My name is Dr. Gilbert Martinez.

5 Q. Hold on one second, Doctor.

6 (Discussion off the record.)

7 MR. BEACH: Paul, do you want me to do it?

8 MR. JOHNSON: Do you want to do it? That's

9 fine.

10 MR. BEACH: I'll do it. Do you want me to go

11 ahead?

12 MR. JOHNSON: We need the Defendant.

13 (Defendant returned to courtroom.)

14 MR. BEACH: Judge, I think I'm going to conduct

15 this interrogation with the Defendant's permission.

16 THE COURT: Okay, go ahead.

17 MR. BEACH: Just to shorten the time.

18 CROSS-EXAMINATION

19 BY MR. BEACH:

20 Q. Dr. Martinez, my name is Andy Beach. I'm a

21 prosecutor. I want to find out, first of all, have you

22 prepared a report in this matter?

23 A. Yes, I have.

24 Q. Could I see it?

25 A. Yes.

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1 MR. JOHNSON: Judge, we're going to object to

2 the report at this time.

3 THE COURT: I won't get a copy of the report?

4 MR. JOHNSON: After he testifies.

5 705 only goes to underlying data from the

6 report, Your Honor.

7 MR. BEACH: He's reviewed his report, I take it,

8 before he's testified, so I'm entitled to look at whatever he's

9 reviewed.

10 MR. JOHNSON: Not if it was prepared after the

11 diagnosis. The report was prepared just for consultation

12 purposes. It's discoverable after he testifies --

13 COURT REPORTER: I'm sorry. You're going to

14 have to slow down. I can't understand you.

15 THE COURT: It's late in the day.

16 MR. JOHNSON: Okay. Well, Judge, the objection

17 is as far as his -- 705 goes to the underlying data from which

18 the opinions were formed. A report that's consultive in nature

19 will go to the testifying for cross-examination and

20 cross-examination --

21 THE COURT: Okay --

22 MR. JOHNSON: -- purposes.

23 THE COURT: Hold on. I might as well just say

24 this on the record. I have no idea who this doctor is and

25 which side he's testifying for. I don't have any ideas if this

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1 is a State's witness or a Defense witness.

2 MR. JOHNSON: Judge, I'll tell the Court so

3 you'll understand. It is late in the day, we've been working

4 hard, we're trying to save a little time. This is a witness

5 for the Defense that's going to testify in regards to

6 conducting neuropsychic exams on the defendant and clinical

7 psychological exams on the defendant. He has formed opinions

8 in regards to his cognitive disorders and to his mental

9 disorder, and he is going to offer an opinion in regard to

10 those particular areas.

11 THE COURT: Okay.

12 MR. JOHNSON: I was going to allow the State to

13 do it just in order to cut some time.

14 MR. BEACH: You're saying I'm not entitled to

15 his opinions?

16 MR. HEALY: You are.

17 MR. JOHNSON: Absolutely.

18 MR. BEACH: His opinions are in the report.

19 MR. JOHNSON: I know, but he can testify to

20 them.

21 MR. BEACH: That's fine, I'll go on.

22 Q. (BY MR. BEACH) Doctor, you have a report; is that

23 correct?

24 A. That is correct.

25 Q. How many pages is it?

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1 A. Seventeen pages.

2 Q. Okay. And does it contain all your opinions in this

3 matter?

4 A. Yes.

5 Q. All right. Have you interviewed the defendant Gary

6 Green in this case?

7 A. Yes, I have.

8 Q. How many times?

9 A. One time.

10 Q. And when was that?

11 A. That was on May 25th, 2010.

12 Q. Okay. And about how long was he interviewed?

13 A. He was interviewed for about two hours and then he

14 was tested for about five hours.

15 Q. Okay. And prior to the May interview of the

16 defendant were you provided any materials to review?

17 A. Yes, I was.

18 Q. What were you provided?

19 A. I was provided records from a facility named

20 Timberlawn, I believe.

21 Q. Yes, sir.

22 A. And I was also provided records from Parkland

23 Medical Services, I believe, reflecting evaluation and

24 treatment that Mr. Green had had over the last maybe 15 or

25 20 years or so. And I believe that that was the majority of

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1 the records that were provided to me. I was also provided --

2 I'm sorry, I was also provided with a summary of some

3 interviews by Dr. Kelly Goodness.

4 Q. Okay. And do you have that summary here?

5 A. Yes, I do.

6 Q. Can I take a look at that real quick?

7 MR. BEACH: And can I get a copy of his file?

8 MR. JOHNSON: I don't have an objection. I have

9 no objection.

10 MR. BEACH: We can make a copy of everything he

11 has and we can get through this very quickly.

12 THE COURT: Okay. Let me ask -- so -- just so I

13 know.

14 MR. BEACH: Yes, sir.

15 THE COURT: We're not having any 702 problems or

16 anything like that, or are we? That's -- You're not saying --

17 You're saying he's qualified to be here and testify?

18 MR. BEACH: I'm not contesting his

19 qualifications.

20 THE COURT: Okay --

21 MR. BEACH: All I want, Judge, is all the

22 underlying data that he's reviewed and then the opinions that

23 he's reached.

24 A. Okay. This is the information that I received from

25 Dr. Goodness that was aside from the medical records, and then

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1 these were the medical records that I had received at the time
 2 prior to my assessment.
 3 I should say around the time of the assessment.
 4 I don't actually whether I received them right before or right
 5 after, but I included a review of that in my report.
 6 Q. (BY MR. BEACH) So the summary from Dr. Goodness,
 7 and then Parkland Health and Hospital System Jail Records; is
 8 that correct?
 9 A. Correct.
 10 Q. Anything else in terms of records provided to you to
 11 help you reach your opinions in this case?
 12 A. Those were the records that were provided to me
 13 around the time of my evaluation. I was recently provided more
 14 records, including a letter by Mr. Green, and also a social
 15 history summary, and then several other medical records.
 16 Actually this was something else that I was working on for a
 17 separate file, so --
 18 Q. That doesn't have anything to do --
 19 A. That's another case, that's a different case. I'm
 20 sorry. I was out there working while I was waiting for this
 21 and so I accidentally mixed up some records.
 22 And I was provided these records as well today.
 23 Q. Today?
 24 A. Yes.
 25 Q. You're talking about some additional --

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1 A. Additional medical records --
 2 Q. -- from Parkland --
 3 A. -- from Parkland. It seems like most of those or
 4 all of those are from Parkland.
 5 Q. Okay.
 6 A. And I -- it appears that they are reflecting
 7 intervention and evaluation of Mr. Green after my assessment.
 8 Q. And a letter from Mr. Green to the -- one of the
 9 victims in this case; is that correct?
 10 A. I believe so, yes.
 11 Q. And who generated the social history summary, do you
 12 know?
 13 A. I don't know who generated that; it was provided to
 14 me today to review.
 15 Q. Anything else in your file that was provided to you
 16 to help you reach your opinions in this case?
 17 A. No, everything else was generated by me.
 18 Q. Where are the Timberlawn records, do you know?
 19 A. The Timberlawn records are --
 20 Q. One of these files?
 21 A. Part of the first file that I gave you.
 22 Q. Okay. Anything else?
 23 A. The only other thing is the Court Order to evaluate
 24 Mr. Green, and I believe that is it.
 25 MR. BEACH: So, Paul, the only thing I don't

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1 have is the Goodness Summary and the social history summary?
 2 Everything else are just copies of records that are in
 3 evidence?
 4 MR. JOHNSON: That's fine.
 5 And, Andy, just so we're clear, I can do it on
 6 cross, we've also discussed, and I believe he's seen the TDC
 7 psych records. I don't know if he's specified to that.
 8 Q. (BY MR. BEACH) Do you have those with you, the TDC
 9 psych records?
 10 A. I think -- I think those are the Parkland -- What
 11 we're referring to as the Parkland records, I believe.
 12 Q. No, that's going to be separate. Parkland is the
 13 county jail records, and TDC are going to be the records from
 14 his ten-year stint in the penitentiary.
 15 A. Those are included in the first -- in the first
 16 batch of records that I gave you, or everything that I reviewed
 17 is included, in is there.
 18 Q. So if they're not in here you haven't reviewed them?
 19 A. Correct.
 20 MR. BEACH: I guess we need to make copies of
 21 those then.
 22 How do you propose doing this? Now or before he
 23 leaves tonight?
 24 MR. JOHNSON: I want him to take whatever he's
 25 got. We need to do it --

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1 MR. HEALY: She can do it right now.
 2 MR. BEACH: Okay. Amy, what's it's going to be?
 3 (Documents handed to intern.)
 4 Q. (BY MR. BEACH) And based on your interview and
 5 testing of the defendant as well as the records that were
 6 provided to you, have you formed certain opinions in this case?
 7 A. Yes, I have.
 8 Q. And just tell me step by step what each individual
 9 opinion is as detailed as you can.
 10 A. Yes. My first opinion is that Mr. Green suffers
 11 from a mental disorder that affects his thinking and his mood.
 12 His symptoms meet diagnostic criteria for schizoaffective
 13 disorder.
 14 Q. Okay.
 15 A. Bipolar type.
 16 Q. Okay.
 17 A. He suffers from a history of paranoid delusions and
 18 behavior, mixed in with episodes of depression that varied in
 19 severity over time. Those symptoms do not appear to meet
 20 diagnostic criteria for schizophrenia and they exceed criteria
 21 for major depressive disorder. So I feel that they meet the
 22 criteria for a -- for a schizoaffective disorder. I also
 23 found -- My second opinion is that Mr. Green does suffer from
 24 some deficiencies in his intellect. His intellectual
 25 functioning I believe is in the low average range. And

1 specifically in the lower end of the lower average range. And
 2 he has -- These deficiencies both with respect to verbal and
 3 non-verbal abilities, and then I also feel that he has
 4 cognitive dysfunction that is partially associated with these
 5 intellectual disabilities that he has, and the cognitive
 6 dysfunction is in the form of difficulty with his higher level
 7 thinking and reasoning, and mental shifting and learning.
 8 And then my third opinion is that Mr. Green also
 9 has characteristics of a personality disorder, and mixed
 10 characteristics of different types of personality disorders.
 11 He has paranoid thinking and behavior as mentioned earlier that
 12 is also a personality characteristic. He also has a tendency
 13 towards emotional decompensation, and he has a tendency to have
 14 difficulty in maintaining interpersonal relationships. He's
 15 also avoidant. He avoids other people in social situations and
 16 social relationships.

17 And then he also has a depressive personality in
 18 addition to the mood disorder where he has major depressive
 19 symptoms that are severe.

20 He also has the type of personality that's prone
 21 towards depressive behavior and thinking that is ongoing. And
 22 I felt that these -- that these symptoms were going to
 23 compromise his ability to understand complicated information
 24 and -- and I feel that these symptoms can be moderated with
 25 treatment and it's also my opinion that he did not receive

1 adequate treatment and attention for his mental disorder
 2 throughout his life.

3 Q. Have you diagnosed Mr. Green with a specific
 4 personality disorder?

5 A. No, I have not. I diagnosed him with a -- what's
 6 called Personality Disorder NOS which basically indicates that
 7 my opinion is that he does not have a specific personality
 8 disorder, but that he has features of several different
 9 personality disorders.

10 Q. Okay. Features of several different personality
 11 disorders. Do any of those include Antisocial Personality
 12 Disorder?

13 A. No, that was not my opinion.

14 Q. So your opinion, Doctor, is not Mr. Green is anti --
 15 meets the criteria of anti-personality disorder; is that
 16 correct? I mean, antisocial personality disorder?

17 A. That is correct.

18 Q. Specifically in regards to your diagnosis of
 19 schizoaffective disorder, what are you basing that on?

20 A. I'm basing that on Mr. Green's history as obtained
 21 from various sources, including medical records, interviews
 22 with his mother, and his brother, and an interview with Mr.
 23 Green. I am also basing that on the results of my
 24 psychological testing. I administered standardized
 25 psychological tests that are designed to evaluate a person's --

1 individual's mental functioning. And I am also basing that on
 2 my clinical impressions, my observations of Mr. Green during
 3 the seven hours or so that I spent with him during the
 4 assessment.

5 Q. Okay. Did you personally interview any of Mr.
 6 Green's family members?

7 A. Yes, I interviewed Mr. Green's mother, and Mr.
 8 Green's brother.

9 Q. When did that happen?

10 A. I would have to refer to my records to tell you
 11 exactly when it happened.

12 THE COURT: Why does it matter?

13 MR. BEACH: Excuse me?

14 THE COURT: Why does it matter?

15 MR. BEACH: I just wanted to know if he talked
 16 to them today versus six months ago or --

17 MR. JOHNSON: It was months ago.

18 THE COURT: Okay. I should have asked the
 19 question, I should have said, are we talking about today or
 20 four or five months ago.

21 THE WITNESS: No, I interviewed them shortly
 22 after my evaluation of Mr. Green, within the two weeks after my
 23 evaluation.

24 Q. (BY MR. BEACH) And so you were telling me what you
 25 based your opinion in terms of the schizoid affective disorder?

1 A. Yes. And in summary it was a -- my review of
 2 records, my interviews with the patient and their family, my
 3 test results and my clinical impressions of the patient.

4 Q. You've told us that in your opinion Mr. Green is not
 5 antisocial; is that correct?

6 A. That is correct.

7 Q. You told us, or in your opinion is Mr. Green
 8 mentally retarded?

9 A. No, he is not mentally retarded.

10 Q. Did you do any kind of I.Q. testing?

11 A. Yes, I did.

12 Q. What were the results of that?

13 A. The results were a -- and I can give you the exact
 14 numbers here. The results were a full scale I.Q. score of 78,
 15 which is in the borderline range. And -- and the verbal I.Q.
 16 and the perceptual I.Q. were 81 and 84 respectively.

17 Q. Any evidence that Mr. Green was malingering or
 18 exaggerating, trying to fake you out during your seven hours of
 19 testing or five hours, whatever it was?

20 A. No, I do not believe that there was any events of
 21 that.

22 Q. And Mr. Green in your opinion is not schizophrenic?

23 A. I do not believe that he is schizophrenic.

24 Q. Not bipolar?

25 A. There is a chance that he may be bipolar.

1 Q. Well, that's why I'm trying to find out today,
2 Doctor. Can't talk about possibilities or chances. In your
3 opinion, based on all the information available to you today
4 and your testing, is Mr. Green bipolar as he sits here?
5 A. He is a bipolar type of schizoaffective disorder
6 which shares a lot of common features with bipolar disorder,
7 but I do not believe he meets the diagnostic criteria for
8 bipolar disorder.
9 MR. BEACH: That's all, Judge.
10 THE COURT: Are we done?
11 MR. JOHNSON: I don't think I have anything.
12 Q. (BY MR. BEACH) Are those all of the opinions that
13 you've told me about?
14 A. Yes.
15 MR. BEACH: Okay. That's all.
16 THE COURT: Is there any objection to him
17 testifying?
18 MR. BEACH: No, sir.
19 THE COURT: Okay.
20 (Recess.)
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23
24
25

1 Reporter's Certificate
2 THE STATE OF TEXAS:
3 COUNTY OF DALLAS:
4 I, Darline King LaBar, Deputy Official Court Reporter in
5 and for the 282nd District Court of Dallas County, State of
6 Texas, do hereby certify that the above and foregoing volume
7 constitutes a true, complete and correct transcription of all
8 portions of evidence and other proceedings requested in writing
9 by counsel for the parties to be included in the Reporter's
10 Record, in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported by me.
12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 admitted by the respective parties.
15 WITNESS MY OFFICIAL HAND this the Reporter's Certificate
16 on the 14th day of March, A.D., 2011.
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